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**RESERVE**

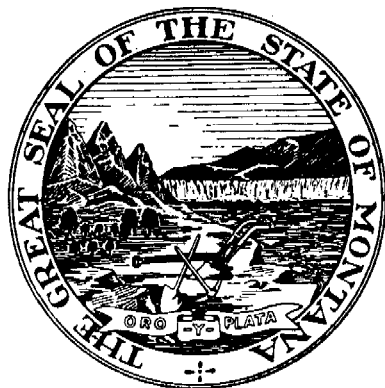
# **MONTANA ADMINISTRATIVE REGISTER**

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OCT - 1981

OF MONTANA

1981 ISSUE NO. 19  
PAGES 1120-1244



NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana, 59620.

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HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                               |   |
|-------------------------------|---|
| Known Subject Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.           |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
|                               | 3. Locate volume and title.   |
| Subject Matter and Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.   |
| Title Number and Department   | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.  |
| Title Number and Chapter      | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.)                              |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.                              |
| Rule in ARM                   | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.                              |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1981. This table includes those rules adopted during the period July 1, 1981 through September 30, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1981, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published.

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BEFORE THE MERIT SYSTEM COUNCIL  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rules governing the operation	)	ON PROPOSED AMENDMENT OF
of the Montana Merit System	)	RULES LOCATED IN CHAPTER
	)	23, TITLE 2 GOVERNING
	)	THE OPERATION OF THE
	)	MONTANA MERIT SYSTEM

TO: All Interested Persons

1. On Wednesday, November 4, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, at Helena, Montana, to consider the amendment of rules governing the operation of the Montana Merit System.

2. The proposed amendment would decentralize the operation of the Merit System Bureau in agencies and Job Service.

3. The rules proposed to be amended are as follows:

2.23.303 PURPOSE OF THE MONTANA STATE MERIT SYSTEM

(1) The Montana state merit system is established to provide a fair and objective system of personnel administration for state and local agencies receiving grants-in-aid from the federal government. The goal of the merit system is to serve citizens of Montana, state agencies, and their employees by developing and administering policies and procedures that assure recruitment, selection, compensation, training, separation, and other aspects of personnel administration are based on merit. The merit system strives to provide equality of opportunity for all persons wishing to enter public employment and to enhance those opportunities for handicapped and disadvantaged persons. In cooperation with agencies, the merit system will continually strive to improve personnel programs in the state of Montana.

(2) The cooperative efforts of the merit system bureau and program agency personnel offices in providing comprehensive personnel programs are essential.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.305 MERIT SYSTEM COUNCIL MEMBERS (1) As provided by 2-15-1006, MCA, the Montana state merit system council will consist of three members appointed by the Governor after joint recommendation by the participating agencies. Council members will have overlapping 6-year terms, with one appointment or reappointment to be made on June 1 of each even-numbered year. When a term expires, the member affected will continue to serve until reappointed or until a successor has been named. A vacancy during a term will be filled by an appointment for the remainder of the term.

with the health agency's rule and confusing to the public if it is not consistent).

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to (15-name, address), no later than (16-date at least 28 days from the day of notice. 2-4-302(4)).

5. (17-name, address) has been designated to preside over and conduct the hearing.

6. The authority of the agency to repeal the rule is based on section (18-), MCA, and the rule implements section or sections (19-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (20- Authorized person's signature)

Certified to the Secretary of State (21-date).

Sample form 7: Notice of proposed adoption of a substantive rule. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
ADOPTION OF A RULE (2-	)	ADOPTION OF A RULE
summary; for ex.: speci-	)	(3-subject; for ex.:
fying the forms available)	)	Water Use Act Forms)
for use under the Montana)	)	
Water Use Act)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (4-date), the (5-agency) proposes to adopt a rule (6-summary; for ex.: specifying the forms available for use under the Montana Water Use Act).

2. (Option 1:) The proposed rule provides as follows:

(7-text of proposed rule).

(Option 2:) The proposed rule provides in summary that: (7-summary). A copy of the entire proposed rule may be obtained by contacting\_\_\_\_\_.

(Option 3:) The proposed rule provides in substance that: (7-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Options 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (8-rationale for proposed rule; for ex.: The rule is proposed to respond to a petition for its adoption filed by the Montana Water Users Association. The petition sets forth reasons why the forms should be available to the public. Copies of the petition are available from the department).

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to (9-name, address), no later than (10-date at least 28 days from the day of notice. 2-4-302(4)).

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to (11-name, address), no later than (12-date at least 28 days from day of notice. 2-4-302(4)).

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (13-) persons based on (14-for ex.: the 200 licensed plumbers in Montana).

7. The authority of the department to make the proposed rule is based on section (15-), MCA, and the rule implements section(s) (16-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (17- Authorized person's signature)

Certified to the Secretary of State (18-date).

Sample form 8: Notice of proposed adoption of a procedural rule when no public hearing is contemplated. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
adoption of Rule (2-)	)	ADOPTION OF RULE (4-)
(3-summary)	)	(5-subject) NO PUBLIC
	)	HEARING CONTEMPLATED

TO: All Interested Persons.

1. On (6-date), the (7-agency) proposes to amend rule (8-) which (9-summary).

2. (Option 1:) The rule as proposed to be amended provides as follows:

(10-text of rule with matter to be omitted interlined and new matter added, then underlined.)

(Option 2:) The rule as proposed to be amended provides in summary that (10-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting

(Option 3:) The rule as proposed to be amended provides in substance that : (10-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Option 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (11-rationale for the proposed amendment)

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to (12-name, address), no later than (13-date at least 28 days from the day of notice. 2-4-302(4)).

5. The authority of the agency to make the proposed amendment is based on section (14-), MCA, and the rule implements section(s) (15-), MCA.

name of department head or  
chairman of the governing board  
must be signed by:

By: (16-Authorized person's signature)



Certified to the Secretary of State (17-).

Sample form 9: Notice of proposed amendment of a substantive rule. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule (2-)	)	AMENDMENT OF RULE (4-)
(3-summary)	)	(5-subject)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (6-date), the (7-agency) proposes to amend rule (8-) which (9-summary).

2. (Option 1:) The rule as proposed to be amended provides as follows:

(10-text of rule with matter to be omitted interlined and new matter added, then underlined.)

(Option 2:) The rule as proposed to be amended provides in summary that (10-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting

(Option 3:) The rule as proposed to be amended provides in substance that : (10-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Option 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (11-rationale for the proposed amendment)

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to (12-name, address), no later than (13-date at least 28 days from the day of notice. 2-4-302(4)).

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to (14-name, address), no later than (15-date at least 28 days from day of notice. 2-4-302(4)).

(b) confidential assistant(s) to the executive head of a state agency or top level position defined in (2)(a) above;

(c) the administrator of the disaster and emergency services division or the director of an independent local civil defense/disaster and emergency service agency;

(d) members of policy, advisory, review, and appeals boards or similar bodies who do not perform administrative duties as individuals;

(e) bona fide part-time positions with work schedules of less than 20 hours per week, and bona fide part-time county disaster and emergency services/civil defense positions with work schedules of less than 40 hours per week;

(f) attorneys serving as legal counsel;

(g) time limited positions established for the purpose of conducting a special study or investigation;

(h) severely handicapped persons recommended by the department of social and rehabilitation services;

(i) personnel working under personal service contracts; and

(j) unskilled laborers.

(3) Requests for exemptions under (2)(a) above must be presented to the merit system council for approval. ~~All other requests for exemptions under this rule will be handled by the chief of the merit system bureau. Decisions made by the chief may be reviewed by the merit system council upon the request of an agency director.~~

(4) Job related qualification requirements should be established for positions exempted.

(5) Current management employees who accept appointments to exempt policy determining and advocacy, confidential, and other key positions may be reinstated to the employee's former class of position or a comparable position under the following conditions:

(a) The position must be vacant.

(b) The employee must meet current minimum qualifications for the position.

(6) Upon exemption of a position from the career service, incumbents with permanent status retain their career service tenure or will be appropriately compensated for its loss.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.501 COOPERATION WITH AGENCIES UNDER MONTANA MERIT SYSTEM

(1) The Montana state merit system council will focus the majority of its activities on providing the best possible personnel for the agencies it serves. ~~The merit system bureau~~ The job service will work with the agencies to set up an effective program of statewide recruitment, and will conduct its examination and related programs in such a way as to select for certification the most qualified of available

applicants, and will assist the agencies in a continuous evaluation of their personnel policies to promote high standards of personnel procedures in accordance with the basic principles embodied in these rules. Cooperating merit system agencies will meet on a quarterly basis to coordinate recruitment, testing, and selection methods and discuss problem areas.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.502 COOPERATION WITH OTHER CIVIL SERVICE AGENCIES

(1) The Montana state merit system council will cooperate with other civil service agencies in conducting examinations and related procedures. The chief of the merit system bureau may recognize and accept certification from registers of eligibles in other civil service agencies operating under the same standards as the Montana state merit system.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.702 APPEALS -- PERMANENT EMPLOYEES (1) Permanent employees who have been reclassified, demoted, suspended, dismissed, separated through a reduction in force, denied reinstatement when the employee's previous class of position is open, or any employee who alleges that he or she has been subject to discrimination as defined in ARM 2.23.601 may appeal to the Montana state merit system council. Such appeals must be made in writing stating the basis of the appeal within 30 calendar days after the effective date of exhausting the agency grievance procedure. A hearing before the merit system council will be arranged by the chief of the merit system bureau within 15 calendar days upon receipt of the written appeal. The attorney general's model rules are modified to this extent. The council will review the record of the grievance and consider oral and written statements presented by the parties. The council reserves the right to conduct an evidentiary hearing on the merits of the grievance. The employee and the agency director will be notified reasonably in advance of the hearing and will have the right to have someone represent him/her. The decision of the council in all appeals will be final and binding upon the agency and employee, but does not preclude the agency's or employee's right to appeal the council's decision before a Montana district court as provided under the Montana Administrative Procedure Act. Any action taken by the council is without prejudice to the employee's right to timely file a complaint of discrimination with the Montana human rights commission after the alleged unlawful discrimination occurred or was discovered.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.703 APPEALS--APPLICANTS AND ELIGIBLES (1) Applicants and eligibles who allege discrimination as defined in ARM 2.23.601 who have been found ineligible to take examinations, or who have been removed from a register, may also appeal to the Montana state merit system council. Such appeal is without prejudice to the applicant's or eligible's right to timely file a complaint with the Montana human rights commission after the alleged unlawful discrimination occurred or was discovered.

(2) With the exception of discrimination as defined in ARM 2.23.601, hearings will be informal; the council need not meet as a body. The following procedures will apply:

(a) When rejected for examination, the council will review the applicant's qualifications and make a determination as to whether or not the individual will be admitted to the examination. The individual will not be admitted to any part of the examination pending the council's decision.

(b) In hearing any appeal of a rating the council will determine whether or not an error was made in scoring the candidate. If the ~~chief of the merit system bureau~~ agency is ordered to correct the applicant's rating, it will be done immediately. However, the correction will not affect certifications or appointments that have already been made from the register.

(c) When an eligible appeals a removal from a register, the ~~chief agency~~ will furnish the council all facts relating to the action. After investigation, the council will render a decision. The council's decision will not affect certifications on appointments that have already been made from the register.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.804 REASSIGNMENTS (1) Employees may be temporarily promoted or assigned an acting appointment as defined in the pay plan rules adopted under 2-18-301, MCA. Temporary promotions may not exceed 12 months in duration. ~~Authority to certify eligibility for temporary promotions and acting appointments may be delegated to the agency subject to post audit by the merit system bureau-~~

(2) Salary adjustments that result from reassignment will be made according to the pay plan rules.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.805 TRANSFERS AND RECLASSIFICATIONS (1) Inter- and intra-agency transfers without change in title or salary may be made at any time.

(2) Reclassification to another class of position having the same entrance salary requires certification by the ~~chief of the merit system bureau~~ agency concerning eligibility for

appointment to the new position. The chief agency may require a qualifying examination. Authority to certify eligibility for appointment to the new position may be delegated to the agency subject to post audit by the merit system bureau.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.902 ADOPTION, MAINTENANCE, AND REVISION OF CLASSIFICATION PLAN (1) The developed position classification plan will be referred to the chief agency for review and comment. If the chief agency finds the plan acceptable, then the plan will be formally adopted.

(2) The agency will keep the plan up to date by making required changes from time to time. Class specifications will be revised to reflect the current duties and responsibilities of the position. Positions will be reclassified when there is a significant change in duties and responsibilities. Revisions will be submitted to the chief agency for approval and formal adoption.

(3) Amendments to the original position classification plan will be prepared and submitted by to the agency to the chief for review, comment, and for formal adoption in the same manner as the original plan.

(4) When the chief makes recommendations to revise a job specification submitted to the chief for formal adoption, the agency will comply with the chief's recommendations.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.903 ALLOCATION OF POSITIONS UNDER CLASSIFICATION PLAN (1) All except specifically exempted positions will be allocated to the most appropriate class under the plan, and proper class titles will be used in payroll and personnel records of the agency. The classification plan will be the basis for examination announcements and admission to examinations.

(2) No appointments or promotions can be made to positions that have not been properly classified except in emergency situations approved by the chief agency.

(3) When the classification plan is revised, positions will be reallocated if they are found to belong in a different class or if the old class has been abolished. Incumbents of reallocated positions will be reassigned to the appropriate class with an equivalent rate of pay. If the pay they are now receiving is less than the minimum of the new range, the salary will be adjusted to the minimum. If the employee's salary is not within an established rate of the new class, the salary will be adjusted to the nearest rate in the new class which is above the employee's current rate of pay.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.912 ADOPTION OF COMPENSATION PLAN (1) If a local government agency is granted the authority to develop its own compensation plan, it must submit that plan to the appropriate state agency for consideration and approval. ~~if the compensation plan is approved it will be forwarded to the chief for formal adoption.~~ In setting up the plan the agency will consider the amount of funds available, the prevailing rates of pay in government and private employment, the cost of living, the state's financial policies, the level of each class of position in the overall classification plan, and other relevant factors.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.913 ADMINISTRATION OF COMPENSATION PLAN (1) After the plan has been adopted or amended it must be used as the official schedule of salaries for all positions under the merit system. Salaries paid for each position must be at one of the steps for that class set up in the compensation plan.

(2) The entrance salary for any employee must be at the minimum for the class to which appointed, except that for positions requiring highly specialized training or experience and skill, entrance salaries above the minimum may be paid under the following conditions:

(a) There must be no more than three eligibles available at the minimum salary for the position involved.

(b) The person employed must be among the three highest eligibles available at the salary offered.

(c) The person employed must possess minimum qualifications in excess of the entrance requirement for the classification and at least equal to 1 additional year of education or experience for each step above the minimum.

(d) The entrance salary, except for professional positions that are deemed critical, must not be higher than the third step in the salary range of the position involved.

~~(e) The appointment must be approved in advance by the chief of the merit system bureau.~~

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.917 SPECIAL SALARY ADVANCEMENTS (1) Special salary advancements of not more than two steps in the range in a 1-year period may be made for unusually meritorious service. Each agency shall establish written standards which define unusually meritorious service. Special salary advancements ~~will~~ may be made by the agency ~~after approval by the chief of the merit system bureau.~~ An agency shall have the right to appeal to the merit system council if a request for a special salary advancement has been disapproved by the chief.

(AUTH. and IMP. Sect. 2-18-105 MCA)

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2.23.920 TRANSFERS AND RECLASSIFICATION (1) Intra-agency transfers without change in title or salary may be made at any time.

(2) Reclassification to another class of position having the same entrance salary requires certification by the chief of the merit system bureau concerning eligibility for appointment to the new position. The chief may require a qualifying examination.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1001 RECRUITMENT (1) An active recruiting program will be conducted, based upon a plan to meet current and projected manpower needs. The recruiting efforts of the merit system job service and program agencies will be coordinated and carried out in a timely manner. Recruitment will be tailored to the various classes of positions to be filled and will be directed to all appropriate sources of applicants in order to attract an adequate number of candidates for consideration and to permit successful competition with other employers. Special emphasis will be placed on recruiting efforts to attract minorities, women, or other groups that are substantially under represented in the agency work force to help assure they will be among the candidates from which appointments are made. Recruiting publicity will be carried out for a sufficient period to assure open opportunity for the public to apply and be considered for public employment on the basis of abilities and potential. Such publicity will indicate that the agency is an equal opportunity employer.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1002 PUBLIC ANNOUNCEMENTS OF ENTRANCE EXAMINATIONS (1) The chief of the merit system bureau The agencies will give adequate public announcements of all entrance examinations and make every reasonable effort to attract qualified persons to compete in the examination and will provide an adequate period for filing of applications.

(2) Examination announcements distributed will include the following items of information:

- (a) class title;
- (b) grade level;
- (c) a description of duties and responsibilities of the class;
- (d) minimum or additional desirable qualifications;
- (e) starting salary;
- (f) hiring agency's title;
- (g) deadline for filing of applications;
- (h) selection procedure and weights;

(i) a statement directing the applicant to make application at the nearest job service office.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1003 WHEN PUBLIC ANNOUNCEMENT OF POSITION REQUIRED

(1) When an agency wishes to fill a position that has not been recruited for on a continuous basis, the agency will notify the chief of the merit system bureau job service. The chief job service will contact those individuals whose names have been filed in a suspense file for the position. The chief of the merit system bureau job service or the agency shall also advertise the position for at least 7 calendar days in such mass media as the chief job service deems necessary. The chief of agency will provide a sufficient number of days, not less than 3 for the filing of applications. Newly created classes will be advertised for in the same manner and time frame. The merit system bureau job service will pay the cost of advertising and will bill the involved agency for reimbursement.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1011 NATURE AND METHOD OF EXAMINATION

(1) For entrance to positions under merit system jurisdiction, examinations will be conducted on an open competitive basis. They will be practical job related tests designed to reveal the applicant's ability to perform the duties of the particular position, and to determine his general background and related knowledge.

(2)(a) Written examinations will be utilized whenever they can adequately measure a significant portion of the skills, knowledges, and abilities needed to do the job. Examinations other than written may be used at the discretion of the chief of the merit system bureau agency for professional positions for which the state licensing or registration is required or where the chief agency determines that adequate written examination material does not exist.

(b) Written tests will be conducted simultaneously in as many places as necessary for the convenience of applicants and as practicable for proper administration. The chief of the merit system bureau job service will make arrangements for time and place, using monitors who are qualified to give the type of examination required.

(c) Where written examinations are required and there is no developed alternate form of the examination, an applicant failing the written examination may not reapply for the same class for a period of 6 months.

(3) Performance tests will be used for stenographic and typing positions and may be required for other positions



whenever the skills, knowledges, or abilities needed to do the job are most readily measurable with the performance test.

(4) Oral examinations may be used for positions requiring frequent contact with the public or involving important supervisory or administrative duties or whenever the skills, knowledge, or abilities needed to do the job are most readily measurable with an oral examination. Oral boards will consist of three or more members, each of whom is knowledgeable concerning the required knowledges, skills, and abilities. At least one member must be technically familiar with the work performed in the classes for which oral examinations are being given. Persons holding political office or known to be active in political management may not serve as oral board members. Oral board rating format criteria must be developed in advance of the oral examination of applicants. Each applicant must be examined and rated on identical criteria. Whenever possible, an oral board member will not rate competitors that are personally known.

(5) Training and experience may be rated as a part of the examination for positions where it is an appropriate measure of fitness for the class. Appropriate recognition will be given recency and quality of experience and pertinency of training. ~~The chief of the merit system bureau may at the request of an agency or upon the chief's own motion, investigate training and experience claimed by applicants who are successful in other parts of the examination. Information from these investigations will be used to rerate competitors whenever misstatements are uncovered, and to change their place on the register accordingly.~~ When an investigation of training and experience discloses misstatements, the applicant may be excluded from further examination or register placement. Such applicant may be barred from taking future merit examinations. When professional entry level classes call for a bachelor's degree, additional numerical credit will not be extended for graduate course work and degrees.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1013 VETERAN'S PREFERENCE (1) In accordance with 10-2-201 through 10-2-206, MCA, as amended, veterans' preference will be granted to persons who served in the armed forces during a war period or who served on active military duty for more than 180 days after January 31, 1955, or who were discharged or released because of a service connected disability, including but not limited to those veterans serving because of the Vietnam conflict:

- (a) who were honorably discharged therefrom;
- (b) who have been residents of Montana for at least 1 year; and
- (c) who make a passing grade in the examination.

(2) To the final score of all such veterans, points will be added as follows:

(a) veterans, their spouses, and dependents, five points;

(b) veterans with a service connected disability certified by the U.S. veteran's administration, their spouses, surviving spouses, and other dependents, 10 points.

(3) Applicants who wish to receive preference must indicate so on the application form and will be required to supply the necessary proofs on additional forms which will be furnished by the chief of the merit system bureau.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1014 SCORING OF APPLICANTS (1) All scoring of applicants will be done objectively and in accordance with approved testing techniques, and final ratings will be established on the basis of announced weights for the separate parts of the examination. Failure in any part of the examination may disqualify a competitor from participation in subsequent parts of the examination and from securing a place on the register, except for clerical performance test. Clerical performance tests may be taken as many times and as often as necessary to secure a passing grade. in determining the system for establishing final ratings on an examination, the chief of the merit system bureau must give due regard to the number of candidates and the number of vacancies likely to occur during the life of the register.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1016 REVIEW OF EXAMINATION PAPERS BY COMPETITORS

(1) competitors will be allowed to review their examination papers in the presence of a merit system bureau job service or agency staff member, and within the confines of the merit system bureau. Only the examination answer sheet may be reviewed. Test booklets and test questions may not be reviewed. Answer sheets or other materials which could reveal the contents of the examination may not leave the possession of the merit system bureau that office or be copied. If a covered position has only one written examination or structured oral interview, the competitor may not retake the examination until 6 months after the date of the examination or answer sheet review, except where an examination procedure specifically allows for an examination retake within a shorter period of time.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1018 RECORDS OF COMPETITORS (1) Examination records will be maintained by the chief of the merit system  
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bureau job service or agencies. Applications and other records of individual competitors will be kept on file for a period minimum of 2 1 years. Records of eligibles who are appointed will be kept permanently by the employing agency.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1031 DISQUALIFICATION FROM COMPETITION, REMOVAL FROM REGISTER, AND REFUSAL TO CERTIFY--WHEN JUSTIFIED

(1) ~~The chief of the merit system bureau agency may, at the request of an agency or upon the chief's own motion, disqualify an applicant from competition, and remove his name from a register or refuse to certify the applicant if the applicant:~~ for the following reasons:

- (1) lacks the announced requirements for the class;
- (2) where physical ability is a bona fide class requirement, is not physically able to perform the duties of the class with reasonable accommodation;
- (3) has been convicted of a felony and is currently under court jurisdiction;
- (4) has ever been dismissed from public service for delinquency or misconduct;
- (5) has used or attempted to use political pressure or bribery to secure an appointment under jurisdiction of the Montana state merit system;
- (6) has failed to submit an application correctly filled out within announced time limits;
- (7) has made deliberate misstatements in an application in attempting to qualify for a class.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1032 REMOVAL FROM THE REGISTER--OTHER JUSTIFICATION

(1) ~~The chief of the merit system bureau agency may remove eligibles from the register or, at the appointing authority's request, refuse to recertify an individual's name on subsequent registers to the appointing authority:~~

- (1) for any of the reasons for disqualifications listed in ARM 2.23.1031;
- (2) on evidence that an eligible cannot be reached by mail;
- (3) on receipt of a statement from an eligible indicating a preference not to be considered for appointment;
- (4) if an eligible declines an offer of employment;
- (5) if an eligible fails to keep a scheduled interview.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1033 NOTIFICATION OF REMOVAL FROM THE REGISTER

(1) The ~~chief of the merit system bureau~~ agency must notify an eligible of a removal from a register.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1034 SUSPENSION FROM REGISTER TO BE FINAL--LIMITED

EXCEPTIONS (1) Except under extenuating circumstances approved by the ~~chief of the merit system bureau~~ agency, an eligible's suspension from the register will be final. Individuals wishing to be reinstated on the register will be treated as a new applicant. If no alternate form of examination exists, the individual must wait a period of 6 months.

(2) An eligible will be reinstated to a register if the eligible sends a written request to the ~~chief of the merit system bureau~~ agency, if the register is still in effect, and:

(a) the suspension was based on ARM 2.23.1032(2) or (3);

(b) the eligible has previously received probationary appointment but did not complete it satisfactorily. In this case he will not be certified again to the previous appointing authority and other appointing authorities who consider him will be advised of the results of the previous appointment.

(c) he has resigned in good standing or has been separated without prejudice from a probationary or permanent position;

(d) if an eligible submits acceptable evidence surrounding reasons for suspension listed in ARM 2.23.1032(4) or (5).

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1101 STATE OFFICE CERTIFICATION (1) Certification of eligibles will be made following receipt of a ~~written~~ request stating the number of positions to be filled, the class title, salary, location of the work, and other pertinent information. For a single vacancy, the ~~chief of the merit system bureau~~ job service or agency will certify the five highest names plus all ties with the fifth eligible, using the register set up for the class of position to be filled. For multiple vacancies, two names for each additional vacancy will be certified.

(2) If a register is exhausted, closely related registers of the same or higher level may be used. In certifying eligibles for a position, the ~~chief~~ agency may use the register for that position and higher registers in the same series if the persons certified rank among the number to be certified when eligibles on both registers are considered in order of their ratings on the two registers.

(3) When an eligible is given probationary appointment, the eligible's name will be suspended from all other registers at the same or lower salary level, subject to reinstatement at the eligible's written request.

(4) If an eligible has been certified three times to the same appointing authority from one register and passed over for three appointments, the appointing authority may request the chief agency in writing to omit the name of the eligible from further certifications from this register. Reasons of justification must be included in the request. Under extenuating conditions, ~~to be approved by the chief, agencies~~ agency may request, in writing with justification(s) the chief to remove the name of an eligible after one certification from subsequent registers. ~~Following the receipt of such a request, the chief may determine the facts and decide whether to certify the eligible again from the register to the appointing authority who has made the request.~~

(5) Within 3 days of the appointing authority's decision to appoint an eligible, those available eligibles interviewed and not appointed to a position will be notified in writing that another eligible was appointed to that position.

(6) The appointing authority may consider an eligible to be not available if the eligible fails to respond to a written inquiry within 5 days of the mailing of the inquiry. The agency must ~~submit~~ maintain proof ~~to the chief~~ that a written attempt was made to contact the eligible. Eligibles not responding to inquiries may be removed from the register.

(7) The life of a certification will be 21 calendar days. ~~Certifications will be returned to the merit system bureau at the end of the 21 days, and no~~ appointment may be made from the register thereafter.

(8) Race (sex) conscious certification of qualified applicants is permissible for occupations in which a utilization analysis indicates underutilization of minorities or women. In such cases, the chief job service or agency will ensure that up to five minorities or women on the register are certified. ~~to the agency.~~

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1102 LOCAL OFFICE CERTIFICATION (1) For vacancies in local offices, the procedure will be the same as for the state office except the local office will receive countywide and statewide registers. The appointing authority will have the option of selecting an eligible for appointment from either register. ~~if there are fewer than three eligibles on either register, the chief of the merit system bureau will submit a nationwide register if one is available.~~

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1103 CERTIFICATION FROM PROMOTIONAL REGISTERS

(1) When promotional examinations are given, the registers established will be used only for certifications ~~to the agency for which the examinations were given.~~ In using a

promotional register, the chief agency will certify the five most qualified available eligibles when competitive promotion is requested. All ties with the fifth eligible will also be referred. For non-competitive promotions, any permanent employee of the agency who is on an appropriate promotional or open-competitive register may be certified.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1104 INFORMATION CONCERNING ELIGIBLES (1) When it is requested, all information ~~that the chief of the merit system bureau~~ has on file concerning eligibles who are certified will be made available to appointing authorities who are considering the eligibles for appointments. When information is not specifically requested the only information to be forwarded with the certificate will be a photocopy of the eligible's application and the most recent availability inquiry.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1106 SELECTIVE CERTIFICATION (1) Certification of eligibles will normally be in the order of their ranking on eligible registers. For some positions approved by the chief wherein the duties and responsibilities of a position require job related qualifications in addition to, or more specific than, those measured in the examination for the class of position, the chief agency may identify and selectively certify fully qualified eligibles for these positions.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1201 APPOINTMENTS GENERALLY (1) Appointments to positions not herein exempted will be made on the basis of merit by selection from among the most qualified eligibles on appropriate registers established in accordance with the provisions on recruitment and selection. Permanent appointment will be based upon satisfactory performance of employees during a time-limited probationary period. In the absence of an appropriate register, individuals appointed to temporary or other non-status positions or given provisional appointments to permanent positions pending establishment of a register will be certified by the chief of the merit system bureau as meeting at least the minimum qualifications established for the class of position. Such appointments will be time limited. Provisional appointments will not be continued beyond the established time limit unless compelling extenuating circumstances exist and are a matter of record. Provisional appointments will be terminated within a specified reasonable period following establishment of an appropriate list of eligibles. Emergency appointments may be made for a

specified limited period to provide for maintenance of essential services in an emergency situation where normal employment procedures are impracticable.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1202 PROBATIONARY APPOINTMENTS (1) All appointments in merit system agencies, exclusive of exempt positions, will be made from appropriate registers whenever there are five or more eligibles available. Selection will be made from names certified in accordance with these rules. Appointments to county ~~or local~~ positions will be reviewed by the administrative officer of the state agency involved to make sure that merit system rules are strictly followed. In selecting persons from among those certified, the appointing authority will be entitled to receive and consider all information about them, ~~which has been secured by the merit system bureau.~~

(2) In making appointments, appointing authorities will provide equitable treatment to all certified eligibles and consider agency affirmative action plans and veterans' and disabled civilian preference provided in 10-2-201 through 10-2-206, MCA.

(3) Eligibles who accept appointment and fail to report for duty at the time and place specified by the agency, except under extenuating circumstances approved by the council, will be permanently suspended, ~~from the register for a period of 2 years from the date of establishing their numerical rating. No reinstatement to the register will be made.~~

(4) All probationary appointees will work on a probationary basis for a period ranging from a minimum of 6 months to a maximum of 12 months as predetermined for each class of position by the agency, ~~with approval of the chief of the merit system bureau.~~ Upon completion of the probationary period, the status of an employee will be changed automatically from probationary to permanent if the agency failed to prepare the written evaluation as outlined in subsection (5) below.

(5) The services of a probationary employee serving a 6-month probationary period will be given a written performance appraisal at the end of the fifth month. Employees not performing satisfactorily may be given 30 days to improve their performance. The services of an employee serving a 12-month probationary period will be given a written performance appraisal at the end of the sixth month and again at the end of the 11th month. If the appraisal(s) is/are satisfactory, the employee is given permanent status at the end of the probationary period. Written appraisals must conform to the Performance Appraisal Policy adopted by the department of administration. ~~Notification of written negative evaluations and rebuttals will be forwarded to the merit system bureau upon request and will be filed in the employee's personnel~~

~~jaeket~~ After the probationary period, employees must be evaluated at least on an annual basis.

(6) Probationary appointees may not be transferred to another position during the probationary period unless they are eligible for certification for the position to which they are transferred.

(7) Probationary appointments may be terminated by the executive officer of the agency at any time during the probationary period, and the employee will have no right of appeal or hearing before the merit system council unless the employee alleges discrimination as defined in ARM 2.23.601.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1203 TEMPORARY APPOINTMENTS (1) In filling temporary positions, eligible applicants who have indicated willingness to accept temporary employment will be certified from the appropriate register, using the same certification procedure as for probationary appointments. Temporary appointments may not continue for more than 9 months in a 12-month period, and eligibles may not be given successive temporary appointments. A full time equivalent position (FTE) may not be filled with successive temporary appointments. ~~All temporary appointments must have prior approval of the chief of the merit system bureau.~~

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1204 PROVISIONAL APPOINTMENTS (1) A person ~~certified by the chief of the merit system bureau~~ as meeting the minimum qualifications for a class of position may be appointed to it on a provisional basis, subject to examination within 6 months if there are fewer than five persons available for appointment from the register for this class and closely related classes and providing the position has been properly advertised according to ARM 2.23.1003 and ARM 2.23.1002(2). The duration of a provisional appointment may never exceed 6 months nor may it exceed 30 days after the appropriate register has been established. Successive provisional appointments of the same person may not be made and a full time equivalent position (FTE) may not be filled by repeated provisional appointments. The period of provisional appointment will be considered as part of the probationary period for persons who are given a probationary appointment within 6 months of the provisional appointment. ~~All provisional appointments must have prior approval of the chief of the merit system bureau.~~

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1206 INTERMITTENT APPOINTMENTS (1) ~~Lists,~~  
~~composed of the names of p~~Persons who have been permanent,



probationary, or temporary employees appointed in accordance with this sub-chapter for at least 3 months and who have indicated to the chief of the merit system bureau willingness to accept intermittent employment, will be prepared by the chief, may be certified by the agency or job service. Such lists, arranged according to class of position, will be known as reserve lists. If the work of an agency demands the services of a person for intermittent periods, the appointing authority may select a person from a reserve list for a class of position. An appointment may be made to a vacancy in the specific class of position for which the reserve list was established, as well as to a vacancy in a related lower class of position, without regard to the standing of the persons on the reserve list and without prior clearance of the chief, but such appointment will be reported to the chief. An intermittent appointment to a higher class of position, however, will not be made from any list of a lower class of position. When the reserve lists become exhausted, appointments will be made in accordance with other provisions of this sub-chapter. The period of intermittent service will not constitute a part of the probationary period. In no case will intermittent employment of an individual continue longer than 90 working days in succession or exceed a total of 9 months during a 12-month period.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1207 CONGRESSIONALLY AUTHORIZED EMPLOYMENT AND TRAINING PROGRAM APPOINTMENTS (1) Congressionally

authorized employment and training program appointments may be made notwithstanding other provisions of these rules in order to hire persons certified by the program operator who meet eligibility requirement established in federal legislation for special employment and training programs in effect at the time of such appointment. Such appointments may be made of persons meeting the federally established eligibility requirements from lists established through open competition, or competition limited to persons meeting those requirements, or persons found by the chief of the merit system bureau to meet the minimum qualification requirements for the position. Authority to determine that appointees meet minimum qualification requirements and may be delegated by the chief to the employing agency.

(2) Such appointments may be made for up to 1 year. Recipients of appointments under this rule will not be given any type of merit system status and may not be converted to probationary or permanent status appointments except under the following conditions:

(a) when original appointment under this rule was made from lists established on an open competitive or limited competitive basis;

(b) when, during the term of appointments under this rule, the individual comes within reach on an appropriate open competitive register; or

(c) on an appropriate register established through limited competition.

(3) An appointee who has not earned merit system status must be terminated at the end of the program date.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1208 NON-COMPETITIVE APPOINTMENTS (1) In those occasional instances where there is evidence that open or limited competition is not practical, non-competitive appointments may be made. ~~All non-competitive appointments must have prior approval by the chief of the merit system bureau.~~ The nature of the tenure, if any, to be granted, and the promotion rights, if any, to be granted to non-competitive appointed employees will be determined by the ~~chief~~ agency.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1301 CAREER ADVANCEMENT GENERALLY (1) Employee performance and potential should be evaluated systematically in order to improve individual effectiveness, to assess training needs and plan training opportunities, and to provide a basis for decisions on placements, promotions, separations, salary advancements, and other personnel actions. When in the best interest of the service it is determined to fill a position by promotion, consideration will be given to the eligible permanent employees in the agency or in the career service, and the selection will be based upon demonstrated capacity and quality and length of service. ~~Promotions will require certification of eligibility by the chief of the merit system bureau.~~ Authority to certify permanent employee eligibility for ~~noncompetitive~~ promotions may be delegated by the ~~chief~~ to the executive officer of the agency. ~~Noncompetitive promotions certified by the agency will be subject to a post-audit by the merit system bureau.~~

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1303 NONCOMPETITIVE PROMOTIONS (1) An agency may promote a permanent status employee upon certification that the employee has passed an examination ~~and~~ or meets the current minimum qualifications for the position involved. Probationary employees may be promoted only if they can be certified on an open competitive basis. Employees who are promoted must serve a trial period. A promoted employee, serving a trial period, will not lose the rights and privileges to the position held just prior to promotion.

(AUTH. and IMP. Sect. 2-18-105 MCA)

19-10/15/81

MAR Notice No. 2-2-77

2.23.1403 RESIGNATIONS (1) Resignations made to an agency in writing, stating the reasons for leaving, will be made a part of the agency's personnel record for the employee. A copy of the payroll termination form shall be forwarded to the merit system bureau and made a part of the employee's permanent record.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1405 SUSPENSIONS (1) After written notice outlining the reasons for suspension, the executive officer of the agency may suspend an employee, without pay, for cause, for a period not to exceed 10 calendar days in any one calendar year. Dismissal may follow the suspension period. A photocopy of the letter of suspension will be forwarded to the merit system bureau and become a part of the employee's record. Agencies shall follow the discipline handling policy set forth in ARM Title 2, chapter 21, sub-chapter 65, as amended.

(AUTH. and IMP. Sect. 2-18-105 MCA)

2.23.1502 AGENCY PERSONNEL RECORDS The executive officer of the agency will designate a staff employee as personnel officer of the agency. Under the direction and supervision of the executive officer, and subject to the executive officer's final approval, the personnel officer will:

(1) be responsible for the entire personnel program of the state and county or local offices of the agency, including preparation and administration of classification and compensation plans and reporting on retention or termination of probationary employees on the basis of evaluations by the supervisors concerned;

(2) assist the chief of the merit system bureau in planning examination programs to recruit enough applicants for the needs of the agency;

(3) assist the chief in developing job related examinations;

(4) (2) maintain complete records of personnel actions of the agency and notify the chief of appointments, promotions, salary increases, demotions, transfers, dismissals, resignations, and reduction in force; and

(4) (3) maintain written employee evaluations.

(AUTH. and IMP. Sect. 2-18-105 MCA)

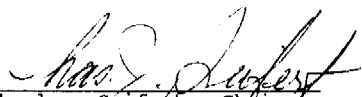
4. The participating agencies and the Merit System Council are proposing these amendments governing the operation of the Montana Merit System as a result of budget reductions caused by federal spending cuts.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Merit System Council, Capital Station, Helena, Montana 59601, no later than November 12, 1981.

6. The Merit System Council has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is listed after each rule.

By:

  
Charles Seifert, Chairman  
Merit System Council

Certified to the Secretary of State October 2, 1981.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF DENTISTRY

IN THE MATTER of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.16.405 (40.14. ) OF ARM 8.16.405 (40.14.405)  
405) concerning fees; and the ) FEE SCHEDULE and PROPOSED  
proposed adoption of a new ) ADOPTION OF A NEW RULE -  
rule regarding oral inter- ) ORAL INTERVIEW  
views. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1981 the Board of Dentistry proposes to amend ARM 8.16.405 (40.14.405) concerning fees and to adopt a new rule regarding an oral interview.

2. The proposed amendment of ARM 8.16.405 (40.14.405) will read as follows: (new matter underlined)

" 8.16.405 (40.14.405) FEE SCHEDULE

(1) Examination fee	\$60.00
(2) Re-examination fee	60.00
<u>(when re-examination does not occur</u> <u>at the same testing date and site</u> <u>as the initial examination)</u>	
(3) *Reciprocity	50.00
(4) Licensure	20.00
(5) Renewal, in-state	25.00
(6) Renewal, out-of-state	25.00
(7) *Duplicate licensure fee	10.00
(8) *Penalty fee	10.00

\*Indicates those fees which are set by statute."

3. The amendment is intended to save applicants the \$60.00 re-examination fee in those instances when re-examination does not cause the Board to incur additional costs. Auth. & Imp 37-3-301

4. The proposed new rule will read as follows:

"I. ORAL INTERVIEW (1) The board may provide that the oral interview portion of the examination for licensure be administered by one or more of its members."

5. The rule is intended to save travel and per diem of its members and to facilitate the scheduling of testing times and sites to accommodate applicants. Auth. & Imp. Sec. 37-3-301

6. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than November 13, 1981.

7. If a person who is directly affected by the proposed amendment and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than November 13, 1981.

8. If the board receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25,

whichever is less, of the persons who are directly affected by the proposed amendment and adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

9. The authority of the board to make the proposed changes is based on section 37- 3-301, MCA and implements the same.

BOARD OF DENTISTRY  
JEANNETTE S. BUCHANAN, R.D.H.  
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1981.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of new rules concern-) FOR ADOPTION OF RULES CON-  
ing physician's assistants ) CERNING PHYSICIAN'S ASSISTANTS

TO: All Interested Persons:

1. On November 5, 1981 at 9:00 a.m., a public hearing will be held in the downstairs conference room, 1424 9th Avenue, Helena, Montana, to consider the proposed adoption of rules concerning physician's assistants.

2. The proposed rules do not replace or modify any sections currently found in the Montana Administrative Code.

3. The proposed rules provides as follows:

1. DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) 'Applicant' means a person intending to practice as a physician's assistant.

(2) 'Board' means the Montana state board of medical examiners provided for in 2-15-1841, MCA.

(3) 'Department' means the Montana department of commerce provided for in 2-15-181, MCA.

(4) 'Physician's assistant' means a health care practitioner who performs such tasks, acts, or functions as are approved by the board and assigned by his supervising physician.

(5) 'Protocol' means the rules prescribing the proper relationship between a physician's assistant and other health care practitioners and which describe the manner of their interaction.

(6) 'Supervising physician' means a person licensed under Title 37, Chapter 3, MCA who is authorized by the board to supervise the practice of physician's assistant under the conditions of an approved utilization plan.

(7) 'Supervision' means communication between the physician's assistant and the supervising physician by telephone, radio, or in person as frequently as the board shall determine is necessary considering the location, nature of practice, and experience of the physician's assistant and the supervising physician.

(8) 'Utilization plan' means the description of the authority of a physician's assistant and his supervising physician which addresses supervision, protocols, limitation of practice as to specialty and location, and the delegation of functions by the supervising physician to the physician's assistant. Auth. Ch. 380, L. 1981, Sections 1 & 9; Imp.Ch. 380, L. 1981, Sec. 9.

II. BOARD POLICY (1) Ensuring the provision of quality health care to the people of Montana shall be the primary consideration of the board when administering these rules. A physician's assistant is to be regarded as an extension of and not a substitute for a physician's care. Auth. & Imp. Ch. 380, L. 1981, Sec. 1 & 9.

III. QUALIFICATIONS OF PHYSICIAN'S ASSISTANT

(1) As evidence of possessing the qualifications required by statute, an applicant shall provide to the board:

- (a) 3 statements of good moral character;
- (b) a copy of a diploma issued by an A.M.A. approved physician's assistant program;
- (c) proof of attaining a passing score on an examination given by the National Commission of Physician's Assistants;

(d) a current certificate issued by the National Commission on Physician's Assistants;

(2) An applicant shall also provide on forms available from the board:

- (a) the applicant's educational background;
- (b) the applicant's work experience;
- (c) a statement that the applicant has not had a certification as a physician's assistant refused, suspended, or revoked by any other state, territory, district, or county for reasons which related to his ability or morals.

(3) For purposes of section 37-20-101 (3), MCA, the board will accept the examination recognized by the National Commission on Physician's Assistants.

Auth. Ch. 380, L. 1981, sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 3.

IV. APPLICATION Applications for approval of a physician assistant utilization plan shall be submitted on forms available from the department and received in the board office not later than 15 days prior to the next scheduled board meeting.

(2) The form shall be signed by the applicant-physician's assistant, the supervising physician, and any other physician who may supervise the applicant in the absence of the supervising physician.

(3) The application shall be accompanied by:

- (a) a proposed utilization plan;
- (b) proof of insurability of the physician's assistant from liability for his errors, omissions, or actions.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 1,2,4,8.



V. FEES (1) The fee for application or renewal of a utilization plan is \$50.00 which is non-refundable.

(2) The fee for substituting another supervising physician under a utilization plan is \$50.00.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 4.

VI. UTILIZATION PLAN (1) In addition to the information specifically required by statute, the utilization plan shall address:

(a) the provision of liability insurance;

(b) the nature of the practice of the supervising physician, including:

(i) the practitioner's specialty,

(ii) the location of the supervising physician's office or hospital assignment in relationship to the location where the physician's assistant intends to work,

(c) intended protocols;

(d) plans for supervision when the supervising physician is not available, such as in emergencies;

(e) any other information which will assist the board in determining that the physician's assistant will be adequately supervised.

(2) When a proposed utilization plan intends to provide authority for the physician's assistant to assist the physician in a medical institution, proof shall be submitted indicating the concurrence of the institution.

(3) When a utilization plan proposes day-to-day contact by telephone or radio only, the plan must provide for an in person survey and inspection by the supervising physician of the physician's assistants' facility, patient records, and office procedures no less frequently than once every 15 calendar days.

(4) An identification tag which uses the term "Physician Assistant" in 16 point type or larger, must be conspicuously worn by a physician's assistant when working.

(5) The patient has the right to be treated by the supervising physician if he is available.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 2.

VII. TEMPORARY APPROVAL (1) Temporary approval of a utilization plan may be granted by a member of the board when:

(a) an applicant has met the requirements of approval except having never taken the examination of the National Commission on Physician's Assistants and is scheduled for the next examination; or

(b) an applicant has met all of the requirements of approval but is awaiting the next scheduled meeting of the board.

(2) Temporary approval is valid only until the results

of the examination are available or until the board meets, as the case may be, depending upon the reason for granting the temporary approval.

(3) Supervision of the physician's assistant practicing under a temporary approval must be in person, continual and direct.

(4) Violation of any provision of these rules during the term of a temporary license shall constitute a basis for denial of approval of the utilization plan.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 2.

VIII. PRESCRIPTIONS (1) A physician's assistant may not prescribe drugs.

(2) The board may allow a physician's assistant to dispense a unit dose of a drug which is received from and prescribed by the supervising physician.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 9.

IX. INFORMED CONSENT (1) The patient's informed consent for services by a physician's assistant must be obtained in cases of a surgical nature, except for emergency care, and the patient must be informed of the procedures to be performed by the physician's assistant under the supervision of the supervising physician.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 9.

X. ALLOWABLE FUNCTIONS (1) The utilization plan shall specify those tasks, procedures, and functions which may be performed by the physician's assistant. The tasks enumerated in this rule are intended to be indicative of the complexity and types of tasks which may be performed.

(2) An appropriate history; perform an appropriate physical examination and make an assessment therefrom; and record and present pertinent data in a manner meaningful to the primary care physician.

(3) Perform and/or assist in the performance of routine laboratory and screening procedures, such as:

(a) the drawing of venous blood and routine examination of the blood;

(b) catheterization and routine urinalysis;

(c) nasogastric intubation and gastric lavage;

(d) the collection of and the examination of the stool;

(e) the taking of cultures;

(f) the performance and reading of skin tests;

(g) the performance of pulmonary function tests;

(h) the performance of audiometry;

(i) the performance of endoscopic procedures, limited to nasoscopy, otoscopy and anoscopy;

(j) the performance of pelvic examinations, including bimanual examinations and the taking of pap smears;

- (k) the taking of EKG tracings.
- (4) Perform routine therapeutic procedures, such as:
  - (a) injections;
  - (b) immunizations;
  - (c) debridement, suture and care of superficial wounds;
  - (d) debridement of minor superficial burns;
  - (e) removal of foreign bodies from the skin;
  - (f) removal of sutures;
  - (g) removal of impacted cerumen;
  - (h) subcutaneous local anesthesia, excluding any nerve blocks;
  - (i) anterior nasal packing for epistaxis;
  - (j) strapping, casting and splinting of sprains;
  - (k) removal of casts;
  - (l) application of traction;
  - (m) application of physical therapy modalities;
  - (n) incision and drainage of superficial skin infections;
  - (o) start, superimpose and discontinue intravenous fluids, and transfusing of blood or blood components;
  - (p) control external hemorrhage;
  - (q) cardio pulmonary resuscitation.
- (5) Recognize and evaluate situations which call for immediate attention of the primary care physician and institute, when necessary, treatment procedures essential for the life of the patient.
- (6) Instruct and counsel patients regarding matters pertaining to their physical and mental health, such as diets, social habits, family planning, normal growth and development, aging, and understanding of and long term management of their disease.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec. 2.

XI. PROHIBITIONS (1) A supervising physician shall not permit a physician's assistant to independently practice medicine. Supervision must be maintained at all times.

(2) A physician's assistant shall not:

- (a) maintain or manage an office separate and apart from the supervising physician's primary office for treating patients unless the board has granted the supervising physician specific permission to establish such an office.
- (b) independently bill patients or third party carriers for services provided.
- (c) independently delegate a task assigned to him by his supervising physician to another individual.
- (d) list his name independently in any telephone directory for public use, using the title "Physician Assistant" or "P.A." or any other term that would indicate that he is a physician assistant.
- (e) perform acupuncture in any form, or

(f) pronounce a patient dead in any setting.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec.

9.

XII. SUPERVISION OF MORE THAN ONE PHYSICIAN'S ASSISTANT

(1) The board may allow a physician to supervise more than 1 physician's assistant only upon a conclusive showing of the ability to adequately supervise more than 1 physician's assistant.

(2) In making such determination, the board will consider:

- (a) specialty of practice;
- (b) degree of direct supervision;
- (c) public need; and
- (d) other relevant evidence.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec.

9.

XIII. REVOCATION OR SUSPENSION OF APPROVAL (1) The approval of a utilization plan may be revoked or suspended, after notice and opportunity for a hearing, if the board finds that the physician's assistant or the supervising physician has violated any provision of law or these rules relating to the use of physician's assistant or the conditions of their utilization plan.

(2) A utilization plan is terminated whenever the license of the supervising physician is suspended or revoked by action of the board.

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec.

5.

XIV. TRANSFER (1) All approved utilization plans are terminated whenever a physician's assistant discontinues his participation in the utilization plan.

(2) An approved utilization plan is suspended whenever the supervising physician discontinues his participation therein; however, the physician's assistant may apply to the board to substitute another supervising physician."

Auth. Ch. 380, L. 1981, Sec. 1 & 9; Imp. Ch. 380, L. 1981, Sec.

2.

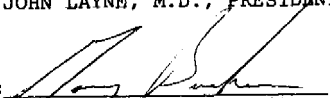
4. Interested parties may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620 - 0407, no November 13, 1981.

5. The board or its designee will preside over and conduct the hearing.

6. The authority and implementing sections are listed after each rule.

BOARD OF MEDICAL EXAMINERS  
JOHN LAYNE, M.D., PRESIDENT

BY:

  
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1981.

19-10/15/81

MAR Notice No. 8-26-21

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF REALTY REGULATION

IN THE MATTER of the proposed )	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 8.58.404 )	OF ARM 8.58.404 (40.56.404)
(40.56.404) concerning applica-) APPLICATION; 8.58.409 (40.56.	
tions; 8.58.409 (40.56.409) ) 409) BRANCH OFFICE REQUIREMENTS;	
concerning branch office re-) 8.58.414 (40.56.414) TRUST	
quirements; 8.58.414 (40.56.414) ACCOUNT REQUIREMENTS; 8.58.	
concerning trust account re-) 417 (40.56.417) FRANCHISING	
quirements; 8.58.417 (40.56.) REQUIREMENTS; and PROPOSED	
417) concerning franchising re-) REPEAL OF ARM 8.58.415 (40.56.	
quirements; and proposed repeal) 415) EDUCATION REQUIREMENTS;	
of 8.58.415 (40.56.415) con-) and 8.58.416 (40.56.416)	
cerning education requirements;) LOAN OF BOARD'S LIBRARY MATER-	
and 8.58.416 (40.56.416) con-) TIALS	
cerning load of board's library) NO PUBLIC HEARING CONTEMPLATED	
materials. )	

TO: All Interested Persons:

1. On November 15, 1981, the Board of Realty Regulation proposes to amend and repeal the above entitled rules.

2. The proposed amendment to ARM 8.58.404 (40.56.404) will read as follows: (new matter underlined, deleted matter interlined)

" 8.58.404 (40.56.404) APPLICATIONS (1) For the purpose of determining the qualifications of a license applicant or an equivalency applicant, the chairman of the board may appoint a committee to review the application and make recommendations to the board.

(2) All applications must be legible and accurately completed and shall include ~~(a)~~ a recent 2 x 2 photograph of the applicant; 1.

~~(b)--a copy of the applicant's high school diploma or official transcript or their equivalent;~~

~~(c)--A General Educational Development Certificate (GED); shall be considered equivalent to a high school diploma; relative to the educational qualifications required--by--section 37-51-302 MCA;~~

(3) All original applications for the Montana real estate brokers and/or salesman's examinations shall be made to the board not later than the first day of the month preceding the date of examination.

(4) All repeat applications for the Montana real estate brokers and salesman's examinations shall be made to the board not later than 30 days preceding the date of examination.

(5) All applications for examination shall remain current for a period of not to exceed 6-months 1 year from the date of application.

(6) All applications received subsequent to the deadline date will be scheduled for the next succeeding

examination without exception."

3. The board is proposing all changes to update the rules to reflect changing business conditions and industry business practices. The authority of the board to make the proposed change is based on section 37-51-203, MCA and implements section 37-51-302, MCA.

4. The proposed amendment of 8.58.409 (40.56.409) will read as follows: (new matter underlined, deleted matter interlined)

"8.58.409 (40.56.409) BRANCH OFFICE REQUIREMENTS

(1) A licensed resident or non-resident broker may qualify for a branch office license.

(2) A licensed real estate salesman shall not qualify for a branch office license.

(3) A real estate license will not be granted to a salesman ~~operating-~~ living in a different town from that of the employing broker, unless a branch office is maintained in that town, displaying a branch office license and the broker's real estate sign; provided, however, that such branch office must be in the charge of a duly qualified and licensed resident broker in the branch office, and that any salesman employed in such branch office shall perform only the acts contemplated to be done by a salesman under a salesman's license; and, that the preparation of instruments in connection with a real estate sale and the act of closing such sales, are functions of a broker and must be performed by or under the supervision of a person or persons duly licensed as a broker.

(4) The real estate licenses of all salesmen employed by a broker at a branch office shall be prominently displayed at the location of the branch office.

(5) The license of the branch office shall be prominently displayed at the location of the branch office."

5. The reason for the proposed change is as stated in 3. above. The authority of the board to make the proposed change is based on section 37-51-203, MCA and implements section 37-51-308, MCA.

6. The proposed amendment of ARM 8.58.414 (40.56.414) will read as follows: (new matter underlined, deleted matter interlined)

"8.58.414 (40.560.414) TRUST ACCOUNT REQUIREMENTS

(1) Each broker shall maintain a separate bank account which shall be designated a trust account wherein all down-payments, earnest money deposits, or other trust funds received by the broker or his salesman on behalf of his principle or any other person shall be deposited.

(2) Trust accounts shall be maintained in banks located in Montana.

(3) All monies, belonging to others and accepted by the broker while acting in his capacity as a broker, shall

be deposited in a federally insured bank or other recognized depository in an account separate from money belonging to the broker.

(a) The name of such separate account shall be identified by the word 'trust account', or 'trustee'.

(b) Client's funds shall be retained in this bank account until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.

~~(c) Trust accounts shall be maintained in banks located in Montana.~~ However, trust monies, (with the exception of the broker's commissions) may be disbursed in advance of the termination or consummation of the transaction upon written agreement of the buyers and sellers.

~~(d) At the client's instructions, trust monies may be retained in the trust account although there is no purchase, lease or rental agreement in existence or when the transaction has been consummated or terminated.~~

(4) Each broker shall only deposit trust funds received on real estate transactions in his trust account and shall not commingle his personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed \$500 in said account from his personal funds which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

(5) A broker may maintain more than one trust account.

(6) Each broker shall deposit all real estate money received by him or his salesmen in the broker's trust account within ~~48 hours~~ three business days of receipt of said money by said broker or said salesman unless otherwise provided in the purchase contract, ~~(lease agreement, or rental agreement)~~. ~~in the event said trust money is received on a day prior to a holiday or other day said bank is closed, said money shall then be deposited on the next business day of said bank.~~

(7) When a broker is registered in the office of the board as in the employ of another broker, the responsibility for the maintenance of a trust account shall be the responsibility of the employing broker.

(8) Brokers are responsible at all times for deposits and earnest money accepted by them or their salesmen.

(9) No payments of personal indebtedness of the broker shall be made from such trust account other than a withdrawal of earned commissions payable to such broker or withdrawals made on behalf of the beneficiaries of such trust account.

(10) Money held in the trust account which is due and payable to the broker ~~should must~~ be withdrawn ~~promptly~~ within 5 business days after such money becomes due

and payable to the broker.

(11) A broker shall not be entitled to any part of the earnest money or other monies paid to him in connection with any real estate transaction as part or all of his commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a provision for division of monies taken in earnest, when the transaction is not consummated and such monies retained as forfeiture payment.

(12) A broker shall maintain in his office a complete record of all monies received or escrowed on real estate transactions, in the following manner:

(a) a bank deposit slip showing the date of deposit, amount, source of the money, and where deposited;

(b) monthly bank statements are to be retained and kept on file;

(c) trust account checks shall be numbered and all voided checks retained. The checks shall denote the broker's business name, address, and should be designated as 'trust account';

(d) a record book which shows the chronological sequence in which funds are received and disbursed;

(i) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.

(ii) For disbursements, the checkbook journal must include the date, the payee, and the amount.

(iii) A running balance must be shown after each **entry** ~~(receipt-of-disbursement)~~ transaction.

(13) A ledger shall be kept to show the receipts and the disbursements as they affect a single, particular transaction as between the buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates and the amounts received. When disbursing funds, the date, payee, and amount must be shown. A running balance must be shown after each **entry** ~~(receipt and-disbursement)~~ transaction.

(14) The trust account must be reconciled monthly except in the case where there has been no activity during that month.

(15) Every broker shall keep permanent records of all funds and property of others received by him for not less than 5 years from date of receipt of any such funds or property.

(16) Each broker shall authorize the board to examine such trust account by a duly authorized representative of the board. Such examination shall be made at such time as the board may direct."

7. The reason for the proposed change is as stated in 3. above. The authority of the board to make the proposed



change is based on section 37-51-203, MCA and implements section 37-51-203, MCA.

8. The proposed amendment of 8.58.417 (40.56.417) will read as follows: (new matter underlined, deleted matter interlined)

" 8.58.417 (40.56.417) FRANCHISING REQUIREMENTS

(1) Franchising means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons in which:

(a) a franchisee is granted the right to engage in the business or services under a marketing plan or system prescribed in substantial part by the franchisor; and

(b) the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trade mark, service mark, trade name, logotype, advertising or other commercial symbols designating the franchisor or his affiliate;

(c) the franchisee is required to pay, directly or indirectly, a franchisee fee.

(2) 'Franchisee' is a person or business entity to whom a franchise is granted.

(3) 'Franchisor' is a person or business entity who grants a franchise.

(4) "Franchisee fee" is any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into and operate a business under a franchise agreement.

(5) Any broker who operates under, or uses, a franchise name shall:

(a) ~~register-such-franchise-name-with-the-board; on a form-to-be-supplied-by-the-board;~~

~~(b)-~~ incorporate in the franchise name and logotype, his own name;

~~(c)~~ (b) conspicuously display on or in all of his advertising, and on his letterhead, deposit receipt forms, listing agreements, and other printed materials generally available to the public, a statement to the effect that his real estate brokerage office is independently owned and operated.

(6) For the purpose of this rule, the term 'broker's name' is that name which appears on the real estate broker's license granted by the board or realty regulation of the state of Montana, or the name of the business entity under which the broker franchisee, does business, but does not include the name of the franchisor."

9. The reason for the proposed change is as stated in 3. above. The authority of the board to make the proposed change is based on section 37-51-203, MCA and implements section 76-40-1201, MCA.

10. The proposed repeal of rule ARM 8.58.415 (40.56.415) repeals the rule in its entirety.

~~"8-58-415-(40-56-415)--EDUCATION-REQUIREMENTS--(1)--The Montana-Real-Estate-Manual-shall-be-sold-to-the-public-at-a-fee-to-be-determined-by-the-board-and-to-include-periodic-costs-of-revision-and-publication--The-rule-shall-not-apply-to-state-libraries-~~

~~(2)--The-manual-fee-must-be-paid-prior-to-the-issuance-of-a-Montana-Real-Estate-Manual-~~

~~(3)--Any-person-wishing-to-purchase-a-manual-must-furnish-his-permanent-address-to-the-board--~~

11. The board is proposing to repeal the rule as the manual is no longer available from the board. The authority of the board to make the proposed change is based on section 37-51-203, MCA. The rule formerly implemented section 37-51-204, MCA.

12. The proposed repeal of ARM 8.58.416 (40.56.416) repeals the rule in its entirety.

~~"8-58-416-(40-56-416)--LOAN-OF-BOARD-LIBRARY-MATERIALS~~

~~(1)--All-volumes-contained-in-the-board-library-may-be-loaned-to-any-member-of-the-public-~~

~~(2)--A-deposit-equal-in-amount-to-the-purchase-price-of-the-volume-borrowed-shall-be-given-to-the-board--The-deposit-shall-be-refunded-upon-the-return-of-the-volume--borrowed--if-a-volume-is-not-retained-to-the-board-the-deposit-required-shall-be-forfeited-~~

~~(3)--A-volume-may-be-borrowed-for-a-period-of-2-weeks-The-loan-period-may-be-extended-by-the-board-or-its-administrator--"~~

13. The board is proposing to repeal the rule as it is outdated. The board does not have library materials to loan. The authority of the board to make the proposed change is based on section 37-51-203, MCA. The rule formerly implemented section 37-51-203, MCA.

14. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeals in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620 - 0407 no later than November 13, 1981.

15. If a person who is directly affected by the proposed amendments and repeals wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620 - 0407 no later than November 13, 1981.

16. If the board receives requests for a public hearing on the proposed amendments and repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and repeals; from the Administrative Code Committee of the legislature; from a governmental agency

or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

17. The authority and implementing sections are cited after each proposed change.

BOARD OF REALTY REGULATION  
DEXTER L. DELANEY, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1981.

BEFORE THE DEPARTMENT AND BOARD OF HEALTH AND ENVIRONMENTAL  
SCIENCES OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC HEARING  
of a rule concerning MEPA ) FOR ADOPTION OF A RULE  
requirements for specific ) ARM 16.2.621  
activities ) (MEPA Requirements)

TO: All Interested Persons

1. On November 13, 1981, at 10:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule concerning MEPA requirements for specific activities.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

2. The proposed rule provides as follows:

16.2.621 MEPA REQUIREMENTS FOR SPECIFIC ACTIVITIES

(1) A PER or an EIS will normally not be prepared for the following actions:

(a) Actions which are excluded from the EIS requirement by ARM 16.2.603(4).

(b) Issuance of an air quality permit pursuant to 75-2-211 MCA (Clean Air Act of Montana) for

(i) a new source which emits under 100 tons per year of any regulated pollutant; or

(ii) modification of an existing source which emits or will emit under 100 tons per year of a regulated pollutant.

(c) Issuance of an MPDES permit pursuant to 75-5-402 MCA (Montana Water Quality Act) for a new or expanded wastewater discharge when the discharge will occur for a period of less than 3 years.

(d) Short-term exemptions from surface water quality standards pursuant to ARM 16.20.633(3).

(e) Approval of a public water or sewer system, pursuant to 75-6-112, unless such system has not been reviewed under either the Sanitation in Subdivisions Act (Title 76, Chapter 4, Part 1, MCA) or the Tourist Campground and Trailer Court Act, (Title 50, Chapter 52, MCA).

(f) Lifting of sanitary restrictions, pursuant to 75-4-125 MCA (Sanitation in Subdivisions Act), from:

(i) a subdivision containing fewer than 5 lots  
(ii) a subdivision containing 5 or more, but fewer than 50 lots, where each lot utilizes an individual sewage disposal and water supply system, except that a PER will be prepared where the subdivision:

(A) is in proximity to critical wildlife habitat or wilderness areas;

(B) may conflict with existing land uses;

(C) may have an impact on water quality; or

(D) may have an impact on an area of special scenic, historic, archeologic, topographic, cultural or recreational significance.

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(iii) a condominium development containing fewer than 50 units, except that a PER will be prepared in those cases described in paragraphs (1)(f)(ii)(A)-(D) of this rule.

(g) Approval of new construction or remodeling of hotels, motels, trailer courts, travel trailer parks, campgrounds, food purveyor establishments, swimming pools, schools, jails, and other public establishments, pursuant to 50-1-203, 50-50-201, 50-51-201, and 50-52-201 MCA, except that a PER will be prepared in those cases described in paragraphs (1)(f)(ii)(A)-(D) of this rule.

(h) Construction, addition, or remodeling of a health care facility which is:

(i) exempt from the Certificate of Need requirements of 50-5-301, et seq, MCA; or

(ii) located within corporate city limits or a zoned rural area.

(i) Vector and biological control of insect pests, where the department's only action is to advise and consult other agencies or private individuals.

(j) Licensing of cesspool and septic tank cleaners, pursuant to Title 39, Chapter 41, Part 1, MCA.

(k) Licensing of water and wastewater treatment plant operators, pursuant to Title 37, Chapter 41, Part 2, MCA.

(1) Adoption, amendment or repeal of rules, except where rules establish air, water, solid or hazardous waste or radioactive materials standards, or would otherwise impact the quality or availability of air, water or land, or establish a major new program or policy, the implementation of which may have significant impacts on the environment.

(2) An EIS will normally be prepared for the following actions:

(a) When a PER indicates that an air quality standard is or may be exceeded;

(b) When a PER indicates significant deterioration of air quality may result, or where the applicable air quality increment to prevent significant deterioration may be exceeded;

(c) Licensing of a hazardous waste disposal facility pursuant to Title 75, Chapter 10, MCA.

(d) All other actions or situations described in ARM 16.2.603(2) and (3).

(3) Notwithstanding subsections (1) and (2) of this rule, at least a PER will be prepared on any multi-agency project when another department of state government with concurrent jurisdiction, or jurisdiction over other aspects of the project, has determined its decision to be a major action requiring an EIS.

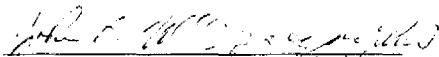
4. This rule is proposed to identify specific activities that normally do not require the department or board to prepare a PER, or that normally do require the preparation of a PER or EIS.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Room C216, Cogswell Building, Helena, Montana, 59620, no later than November 12, 1981.

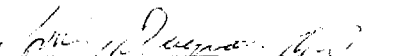
6. Sandra R. Muckelston has been designated to preside over and conduct the hearing.

7. The authority of the board and department to make the proposed rule is based on section 75-1-201, MCA, and the rule implements section 75-1-201, MCA.

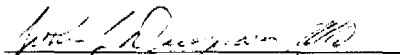
FOR THE BOARD:

  
JOHN F. MCGREGOR, M.D., Chairman

By

  
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

FOR THE DEPARTMENT:

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 5, 1981

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC HEARING  
of a rule concerning procedures ) FOR ADOPTION OF A RULE  
for compliance with the Montana )  
Environmental Policy Act )

To: All Interested Persons

1. On November 13, 1981, at 10:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule concerning procedures for compliance with MEPA.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE 1 PROCEDURES FOR COMPLIANCE WITH MEPA

(1) The board of health and environmental sciences hereby adopts and incorporates by reference ARM Title 16, Chapter 2, Subchapters 6 and 7 in their entirety, which set forth procedures for compliance with the environmental impact statement requirements of the Montana Environmental Policy Act, Title 75, Chapter 1, MCA. A copy of these rules may be obtained from the Board of Health and Environmental Sciences, Room C108, Cogswell Building, 1400 Broadway, Helena, Montana, 59620.

(2) In those instances in which the board of health and environmental sciences determines that the requirements of MEPA are applicable to board actions, the board will follow the procedures set forth in ARM Title 16, Chapter 2, Subchapters 6 and 7, which are incorporated by reference in paragraph (1) of this rule.


4. The Board is proposing this rule because the MEPA procedural rules set forth in ARM Title 16, Chapter 2, Subchapters 6 and 7 were adopted only by the Department of Health and Environmental Sciences. In those instances where EIS requirements apply to board actions, the board desires to follow the procedures set forth in those subchapters, and therefore incorporates them by reference.

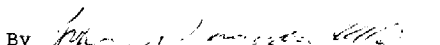
5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Room C216, Cogswell Building, Helena, Montana, 59620, no later than November 12, 1981.

6. Sandra R. Muckelston has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed rule is based on sections 2-4-201 and 75-1-202, MCA, and the rule

implements sections 75-1-201 through 75-1-205, MCA.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State October 5, 1981

19-10/15/81

MAR Notice No. 16-2-196



BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the repeal ) NOTICE OF PUBLIC HEARING  
of rule 16.8.1405, setting ) ON REPEAL OF RULE  
restrictions on open burning ) 16.8.1405  
(Open Burning Restrictions)

TO: All Interested Persons

1. On November 13, 1981, at 9:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of rule 16.8.1405.

2. The rule proposed to be repealed can be found on page 16-229 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because it will be completely replaced by the new open burning rules proposed in this notice.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than November 12, 1981.

5. Sandra R. Muckelston, Cogswell Building, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority of the board to repeal the rule is based on sections 75-2-111 and 75-2-203, MCA.

In the matter of the adoption ) NOTICE OF PUBLIC HEARING  
of rules setting restrictions ) FOR ADOPTION OF RULES  
on open burning ) RESTRICTING OPEN BURNING

To: All Interested Persons

1. On November 13, 1981, at 9:30 a.m., a public hearing will be held in Room C-209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which will set restrictions on open burning, provide for conditional and emergency permits under certain circumstances, and require air quality open burning permits of major sources of pollution.

2. The proposed rules will replace rule 16.8.1405 found at page 16-229 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE 1 DEFINITIONS (1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed major open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts and modeling techniques to minimize smoke impacts, limiting the amount of burning to be performed during any one period of time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. In the case of essential agricultural open burning or prescribed wildland open burning during September, October, or November, BACT constitutes burning only during the time periods specified by the department, which may be determined by calling 406-449-3454 or a toll-free number available from the county sheriff's office.

(2) "Essential agricultural open burning" means any open burning conducted on a farm or ranch for the purpose of:

(a) Eliminating excess vegetative matter from an irrigation ditch where no reasonable alternative method of disposal is available.

(b) Eliminating excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method of disposal is available.

(c) Improving range conditions when no reasonable alternative method is available.

(d) Improving wildlife habitat when no reasonable alternative method is available.

(3) "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning which on a statewide basis will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this chapter, except hydrocarbons.

(4) "Minor open burning source" means any person, agency, institution, business, or industry conducting any open burning which is not a major open burning source.

(5) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires or construction site heating devices used to warm workers.

(6) "Prescribed wildland open burning" means any planned open burning, either deliberately or naturally ignited, which is conducted on forest land or relatively undeveloped rangeland for the purpose of:

- (a) Improving wildlife habitat.
- (b) Improving range conditions.
- (c) Promoting forest regeneration.
- (d) Reducing fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is located in close proximity to a timber harvest site.
- (e) Controlling forest pests and diseases.
- (f) Promoting any other accepted silvicultural practices.
- (7) "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material, with the exception of the silvicultural practice commonly referred to as a salvage cut.

(8) "Trade wastes" means solid, liquid, or gaseous material resulting from construction or the operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning.

(9) "Wood waste burner" means a device commonly called a tepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry for the disposal of wood.

(Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

RULE 11 PROHIBITED OPEN BURNING. The following material may not be disposed of by open burning:

(1) Any waste, including wood waste, which is moved from the premises where it was generated, including that moved to a solid waste disposal site, except as provided for in Rules VII or VIII.

- (2) Food wastes.
- (3) Styrofoam and other plastics.
- (4) Wastes generating noxious odors.
- (5) Wood and wood byproducts other than trade wastes, such as papers, cardboard, or tree limbs, unless a public or private garbage hauler, or rural container system, is unavailable.
- (7) Poultry litter.
- (8) Animal droppings.
- (9) Dead animals or dead animal parts.
- (10) Tires.
- (11) Rubber materials.
- (12) Asphalt shingles, except as provided in Rule VI.
- (13) Tarpaper, except as provided in Rule VI.
- (14) Automobile bodies and interiors.
- (15) Insulated wire, except as provided in Rule VI.

- (16) Oil or petroleum products, except as provided in Rule VI.
- (17) Treated lumber and timbers.
- (18) Pathogenic wastes.
- (19) Hazardous wastes as defined by 40 CFR Part 261.
- (20) Trade wastes, except as provided in Rules VII or VIII.
- (21) Any materials resulting from a salvage operation.
- (22) Chemicals.
- (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

**RULE III MINOR OPEN BURNING SOURCE REQUIREMENTS** A minor open burning source need not obtain an air quality open burning permit, but must:

- (1) Comply with all rules within this sub-chapter with the exception of Rule IV.
- (2) Comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under section 75-2-301, MCA, of the Montana Clean Air Act or any other municipal or county agency responsible for protecting public health and welfare.
- (3) If it desires to conduct essential agricultural open burning or prescribed wildland open burning during September, October or November, adhere to the time periods set for burning by the department and available by calling 406-449-3454 or a toll-free number available from the county sheriff's office.
- (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

**RULE IV MAJOR OPEN BURNING SOURCE RESTRICTIONS** A major open burning source must:

- (1) Utilize best available control technology.
- (2) Prior to open burning, submit an application to the department for an air quality open burning permit. The application must contain the following:
- (a) a legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning.
- (b) The elevation of each planned site of open burning.
- (c) The method of burning to be utilized at each planned site of open burning.
- (d) The average fuel loading or total fuel loading at each site to be burned.
- (3) Receive and adhere to the conditions in any air quality open burning permit issued to it by the department, which will be in effect for one year from its date of issuance.
- (4) In order to open burn in a manner other than that described in the application for an air quality open burning permit, submit to the department, in writing or by telephone, a request for a change in the permit, including the information

required by subsection (3) above, and receive approval from the department.

(Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

RULE V SPECIAL BURNING PERIODS (1) Essential agricultural open burning may be conducted only during the months of March through October.

(2) Open burning other than prescribed wildland open burning and essential agricultural open burning may be conducted only during the months of March through August.

(Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

RULE VI FIREFIGHTER TRAINING. Asphalt shingles, tarpaper, or insulated wire which is part of a building, and oil or petroleum products may be burned in the open for the purpose of training firefighters, if the fire is restricted to a building or structure or a permanent training facility, in a site other than a solid waste disposal site, and if the material to be burned is not allowed to smolder after the training session has terminated, and no public nuisance is created.

(Authority: Sec. 75-2-111, 75-2-103, MCA; Implementing: Sec. 75-2-203, MCA.)

#### RULE VII CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) The department may issue a conditional air quality open burning permit for the disposal of:

(a) trade wastes by any business, trade, industry, or demolition project if it determines that:

(i) alternative methods of disposal would result in extreme economic hardship to the generating entity;

(ii) emissions from such open burning do not endanger public health and welfare or cause a violation of any Montana or federal ambient air quality standards; and

(iii) the entity generating trade waste proposes to the department the means for ultimately terminating the open burning within 2 years of the issuance of the conditional permit.

(b) Untreated wood waste at licensed landfill sites if:

(i) alternative methods of disposal would result in extreme economic hardship to the solid waste management system owner or operator;

(ii) emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or federal ambient air quality standard;

(iii) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the department or its designated representative and no prohibited materials listed in Rule II, other than wood waste, are present.

(2) An air quality open burning permit issued under this Rule is valid for the following periods:

(a) trade waste -- one year, renewable for one additional year.

(b) untreated wood waste at licensed landfill sites -- single burn. A new permit must be obtained for each burn.

(3) The department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of said emissions, and the recipient of such a permit must adhere to those conditions.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the department. (Authority: Secs. 75-2-11, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

RULE VIII EMERGENCY OPEN BURNING PERMITS. (1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this sub-chapter if the applicant demonstrates that the substance sought to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) Application for such a permit may be made to the department by telephone (406-449-3454) or in writing, and must include:

(a) Evidence why alternative methods of disposing of the substance are not reasonably available;

(b) Facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(c) The legal description or address of the site where the burn will occur;

(d) The amount of material to be burned; and

(e) The date and time of the proposed burn.

(Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

4. The board is proposing these rules in order to simplify the open burning program because it is more equitable and cost effective, in terms of concentrating scarce state resources on control of the most important pollution sources, to relieve minor sources of open burning -- who have a minimal impact on air quality -- of the burden of applying for a permit in every case, and to place the burden of applying for and complying with a permit on major open burning sources. In addition, centralization of the program's administration in the state, rather than county, level alleviates the cost of running the program in each county and the problem created by the reluctance of some counties to participate.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than November 12, 1981.

6. Sandra R. Muckelston, Cogswell Building, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority and implementing sections for the proposed rules are shown at the end of each rule.

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rules 16.8.701, definitions	)	ON PROPOSED AMENDMENT OF
for air quality rules; and	)	ARM 16.8.701, DEFINITIONS,
16.8.1102, delineating when an	)	AND ARM 16.8.1102, WHEN
air quality permit is required	)	PERMIT REQUIRED--
and when it is not	)	EXCLUSIONS

TO: All Interested Persons

1. On November 13, 1981, at 9:30 a.m., a public hearing will be held in room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.8.701 and 16.8.1102.

2. The proposed amendments replace present rules 16.8.701 and 16.8.1102, found in the Administrative Rules of Montana. The proposed amendments would change the definition of "wood waste burners" and delete the definitions of "open fire" and "trade waste" in 16.8.701; and would delete the reference to rule 16.8.1405 in rule 16.8.1102, replacing it with a reference to the proposed new open burning rules.

3. The rules as proposed to be amended provide as follows:

16.8.701 DEFINITIONS As used in this and subsequent sub-chapters, unless indicated otherwise, the following definitions apply:

(1) "Animal matter" means any product or derivative of animal life.

(2) "Control equipment" means any device or contrivance which prevents or reduces emissions.

(3) "Control officer" means the director or the administrator, or any employee of the department designated by the administrator, or any local health officer or employee designated by the administrator.

(4) "Existing equipment" means equipment installed prior to November 23, 1968.

(5) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; night club; roadside stand; private, public or nonprofit organization or institution routinely serving food; catering kitchen, commissary, or similar place in which food or drink is placed for sale or for service on the premises or elsewhere; and any other

eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(6) "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

(7) "Incinerator" means any equipment, device or contrivance used for the destruction of garbage, rubbish or other wastes by burning, but not wood wastes burned in devices commonly called teepee burners, silos, truncated cones, wigwam burners or other such burners used commonly by the wood products industries and not including barrels, baskets or other contrivances commonly termed backyard trash burners, trash barrels or ash pits.

(8) "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, or construction, capable of creating or causing emissions.

(9) "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

(10) "New equipment" means:

(a) Any equipment, installation, construction, article, machine or contrivance constructed or installed after November 23, 1968.

(b) Any equipment replaced or altered or processes changed in such a manner after November 23, 1968 as to have any substantial effect on the production or control of air contaminants.

(c) Any equipment moved after November 23, 1968 to another premise involving a change of address.

(d) Any equipment purchased and to be operated after November 23, 1968 by a new owner or when a new lessee desires to operate such equipment.

(11) "Odor" means that property of an emission which stimulates the sense of smell.

(12) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in Method 9, Appendix A, Part 60.275



(Test Methods and Procedures), Title 40, Code of Federal Regulations, as revised July 1, 1977, or by an in-stack transmissometer which complies with all requirements, procedures, specifications and guidelines contained in Performance Specification 1, Appendix B, Part 60.275 (Test Methods and Procedures), Title 40, Code of Federal Regulations as revised July 1, 1977.

(13) ~~"Open-fire" means a fire where any material is burned in the open or in a receptacle other than a furnace or multiple-chamber incinerator.~~

(14) "Particulate matter" means any material, except water in uncombined form that is or has been airborne, and exists as a liquid or a solid at standard conditions.

(15) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

(16) "Premises" means any property, piece of land or real estate or building.

(17) "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

(18) "Process weight rate" means the rate established as follows:

(a) For continuous or long-run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(b) For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(19) "Public nuisance" means any condition of the atmosphere beyond the property line of the offending person which is injurious to health, or offensive to the senses, or which causes or constitutes an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(20) "Reduction" means any heated process, including rendering, cooking, drying, dehydrating, digesting, evaporating, and protein concentrating.

(21) "Ringelmann Smoke Chart" means the chart published and described in the latest applicable U. S. Bureau of Mines Information Circular, used in estimating the light obscuring power of smoke.

(22) "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

(23) "Source" means any property, real or personal, or person contributing to air pollution.

(24) "Stack or chimney" means any flue, conduit or duct arranged to conduct emissions.

(25) "Standard conditions" means a temperature of 70½ Fahrenheit and pressure reduced to 29.92 inches of mercury at sea level.

(26) ~~"Trade waste" means solid, liquid, or gaseous material resulting from construction or the prosecution of any business, trade or industry, or any demolition operation including, but not limited to, wood, plastics, cartons, grease, oil, chemicals andinders--~~

(27) "Wood waste ~~burners~~ burner" means ~~devices~~ a device commonly called a teepee ~~burners~~ burner, ~~also~~ silo, truncated ~~cones~~ cone, wigwam ~~burners~~ burner, and or other such similar ~~burners~~ burner commonly used by the wood products industry for the disposal of burning of wood wastes.

(28) The definitions contained in Section 75-2-103, MCA, shall be applicable where appropriate.  
[Note: If the foregoing amendments are adopted, the definitions will be renumbered due to deletion of (13) and (26)]  
Authority: Sec. 75-2-111, MCA; IMP Title 75, Chapter 2, MCA.

16.8.1102 WHEN PERMIT REQUIRED -- EXCLUSIONS (1) Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit shall not be required for the following:

(a) Residential, institutional, and commercial fuel burning equipment of less than:

(i) 10,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or

(ii) 5,000,000 BTU/hr heat input if burning solid fuel;

(b) Residential and commercial fireplaces, barbecues and similar devices for recreational, cooking or heating use;

(c) Motor vehicles, trains, aircraft and other such self-propelled vehicles;

(d) Laboratory equipment used exclusively for chemical or physical analysis;

(e) Food service establishments;

(f) Any activity or equipment associated with the use of agricultural land or the planting, production, harvesting or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);

(g) Ventilating systems used in buildings to house animals;

(h) Emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unobtainable;

(i) Any activity or equipment associated with the construction, maintenance, alteration or use of roads, except for stationary sources, including but not limited to, rock crushers and asphalt plants, and roads associated with a source that is otherwise required to obtain a permit under this sub-chapter;

(j) Agricultural and forest prescription fire activities (the adoption of this exclusion does not exempt such activities from regulation under ARM-16-8-1405 [Rules I through VII, Open Burning Restrictions]; and

(k) Drilling rig stationary engine and turbines of less than:

(i) 2000 HP if burning natural gas, or

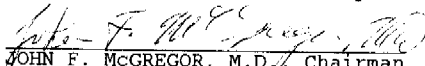
(ii) 1000 HP if burning liquid fuels; and

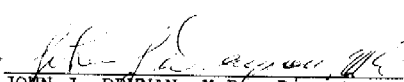
(l) All other sources and stacks not specifically excluded which have the potential to emit less than 25 tons per year of any pollutant for which a rule has been adopted in this chapter. Authority: Secs. 75-2-111, 75-2-204, MCA; Implementing: Secs. 75-2-204, 75-2-211, MCA.

4. The Board is proposing these amendments to the rules in order, in the case of rule 16.8.701, to conform the definition of "wood waste burners" to that appearing in the open burning rules proposed to be adopted in the foregoing portion of this notice, and to delete the definitions of "open fire" and "trade waste", since they appear nowhere else in the rules other than the open burning rule, and are supplanted in the proposed definitions referred to above. The amendment to 16.8.1002 is to update its reference to the open burning restrictions, since a foregoing portion of this notice states the intent of the Board to repeal and replace 16.8.1405.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than November 12, 1981.

6. Sandra R. Muckelston, Cogswell Building, Helena, MT, has been designated to preside over and conduct the hearing.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN J. DRAYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State October 5, 1981

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

IN THE MATTER of Proposed Adop-	)	NOTICE OF PROPOSED ADOPTION
tion of an Interpretive Rule	)	OF AN INTERPRETIVE RULE BY
for Public Service Commission	)	PUBLIC SERVICE COMMISSION
Policy Concerning Urban Trans-	)	THAT URBAN TRANSPORTATION
portation Districts.	)	DISTRICTS ARE NOT WITHIN THE
	)	COMMISSION'S REGULATORY
	)	JURISDICTION
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 18, 1981, the Department of Public Service Regulation proposes to adopt an interpretive rule specifying the position of the Commission concerning its regulatory jurisdiction over urban transportation districts created in accordance with Section 7-14-201 et seq., MCA.

2. The proposed interpretive rule provides as follows:

RULE 1. JURISDICTIONAL POLICY (1) It is declared to be the policy of the Public Service Commission that urban transportation districts created in accordance with Section 7-14-201 et seq., MCA, are not under the regulatory jurisdiction of the Public Service Commission as such districts are not persons or corporations as defined in Sections 69-12-101(8) and (4), MCA, and therefore do not come within the meaning of motor carriers as defined in Section 69-12-201, MCA, which are subject to Public Service Commission regulation.

3. The Public Service Commission is proposing this interpretive rule to formally declare that urban transportation districts and their consumers are not subject to the regulatory jurisdiction of the Public Service Commission.

It is the view of the Commission that urban transportation districts which supply transportation services and facilities to district residents and other persons were not intended to be regulated by the Commission under its Title 69, Chapter 12, MCA, "Motor Carriers" authority. The Commission finds that an urban transportation district does not come within the meaning of the Chapter 12 "Motor Carriers" terms a "person" which is defined as an individual, firm or partnership or a "corporation" which is defined as a corporation, company, association, or joint-stock association. Since both of these terms are used to define a "motor carrier," and the districts do not come within the definition of either term, the districts are not motor carriers nor are they subject to the regulatory jurisdiction of the Commission.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than December 18, 1981.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally

or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than December 18, 1981.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

8. The authority for the Department of Public Service Regulation to make and adopt this interpretive rule is based on provisions of the Montana Administrative Procedure Act, Section 2-4-501, MCA, and the ruling clarifies Section 69-12-101(6)(8) and (4), MCA.

  
GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 5, 1981.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amend-)  
ment of rule pertaining to )  
scheduled dates - Montana )  
Administrative Register. )

NOTICE OF AMENDMENT OF RULE  
1.2.419 FILING, COMPILING,  
PRINTER PICKUP AND PUBLICATION  
SCHEDULE FOR THE MONTANA ADMIN-  
ISTRATIVE REGISTER.

NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On November 14, 1981, the Secretary of State proposes to amend the rule pertaining to the filing, compiling, printer pickup and publication schedule for the Montana Administrative Register.

2. The rule proposed to be amended provides as follows:

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION  
SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The  
Montana-Administrative-Register-is-a-twice-monthly-publication-  
The scheduled filing dates, time deadlines, compiling dates,  
printer pickup dates and publication dates for material to be  
published in the Montana Administrative Register are listed  
below:

1982 Schedule


<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 4	January 5	January 6	January 14
January 18	January 19	January 20	January 28
February 1	February 2	February 3	February 11
February 12	February 16	February 17	February 25
March 1	March 2	March 3	March 11
March 15	March 16	March 17	March 25
April 5	April 6	April 7	April 15
April 19	April 20	April 21	April 29
May 3	May 4	May 5	May 13
May 17	May 18	May 19	May 27
June 7	June 8	June 9	June 17
June 21	June 22	June 23	June 30
July 2	July 6	July 7	July 15
July 19	July 20	July 21	July 29
August 2	August 3	August 4	August 12
August 16	August 17	August 18	August 26
September 3	September 7	September 8	September 16
September 20	September 21	September 22	September 30
October 4	October 5	October 6	October 14
October 18	October 19	October 20	October 28
October 29	November 1	November 3	November 10
November 15	November 16	November 17	November 24
December 6	December 7	December 8	December 16
December 20	December 21	December 22	December 30

(2) All material to be published must be submitted by 5:00 p.m., of the scheduled filing date. All material submitted after the scheduled filing date will not be published until the next scheduled publication date.

3. The rule is proposed to be amended to indicate the scheduled dates for calendar year 1982 that pertain to the Montana Administrative Register.

4. Interested parties may submit their data, views or arguments concerning the schedule in writing to Robert P. McCue, Office of the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59620, no later than November 12, 1981.

5. The authority and the implementing section to make the proposed amendment is based on Section 2-4-312, MCA.

  
JIM WALTERMIRE  
Secretary of State

Dated this 5th day of October 1981.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING FOR
ment of rules pertaining to	)	AMENDMENT OF RULES -
fees for the Administrative	)	1.2.421 Subscription to the
Rules of Montana, Montana	)	Code - Cost; 1.2.423 Agency
Administrative Register	)	Filing Fees
and Agency Filing Fees.	)	

TO: All Interested Persons:

1. On November 4, 1981, at 10:00 a.m., a public hearing will be held in Room 108, Capitol Building, Helena, Montana, to consider the amendment of rules pertaining to fees for the Administrative Rules of Montana, updates to the Administrative Rules of Montana, Montana Administrative Register and agency filing fees.

2. The rules proposed to be amended provide as follows:

1.2.421 SUBSCRIPTION TO THE CODE--COST (1) The secretary of state is required by law, (Sections 2-4-312, MCA and 2-4-313, MCA) to distribute copies of the code and register and revisions thereto, free of charge, to certain federal, state and county agencies enumerated therein.

(2) The secretary is also authorized to make available additional copies of the code, register and revisions thereto to the public at prices fixed to cover publication and mailing costs. ~~Price-lists-will-be-furnished-by-the-secretary-of-state upon request.~~

(3) The 1982 costs for the Administrative Rules of Montana and the Montana Administrative Register are as follows:

(a) Administrative Rules of Montana - \$350.00

(b) Four issues of updates to the Administrative Rules of Montana - \$100.00

(c) Montana Administrative Register - \$170.00

AUTH: 2-4-313, MCA

IMP: 2-4-313, MCA

1.2.423 AGENCY FILING FEES (1) Beginning ~~July~~ January 1, 1982, all agencies will be required to pay a ~~\$2.00~~ \$20.00 per page filing fee for all pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The secretary of state will bill annually for all fees incurred by the agency for the ~~fiscal~~ calendar year.

AUTH: 2-4-313, MCA

IMP: 2-4-313, MCA

3. The rules are proposed to establish fees for the Administrative Rules of Montana, Montana Administrative Register, updates for the Administrative Rules of Montana and agency filing fees, to correspond with legislative intent expressed by the Administrative Code Committee in accordance with Section 2-4-313(6), MCA. Legislative appropriation for the 83 biennium




required that this program be funded out of the revolving fund rather than the general fund. A copy of the Committee's formal action and the supporting documentation regarding the fees to be charged are available on request in the Secretary of State's office.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robert McCue, Room 202, Capitol Building, Helena, Montana, 59620, no later than November 12, 1981.

5. Alan Robertson, Room 202, Capitol Building, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority and implementing sections are listed at the end of each amended rule.

  
JIM WALTERMIRE  
Secretary of State

Dated this 5th day of October 1981.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF THE AMENDMENT OF  
rule 8.7.301 (6) (a) and (6) (h),) RULE 8.7.301 (6) (a) and  
now 8.86.301 (6) (a) and (6) (h),) (6) (h), now 8.86.301 (6)  
relating to the class I price ) (a) and (6) (h).  
announcement )

TO: All Interested Persons:

1. On June 25, 1981, the Board of Milk Control published notice of the proposed amendment of the above rule. The notice was published at page 585 of the Montana Administrative Register, issue number 12.

2. The rule was amended as proposed.

3. A number of statements were received from producers and their representatives in opposition to the proposed motion.

Comment: The comments of the producers and the representatives of the producers was to the effect that the change in the butterfat differential would have the effect of reducing the amount received for milk.

Response: The Board considered the statements of the producers and concluded that the consumers of the state have been overcharged for lower butterfat test milk and that consumption might be increased by the amendment.

4. The authority for the amendment is Section 81-23-302, MCA implementing the same section.

BY ORDER OF THE BOARD OF MILK  
CONTROL  
CURTIS COOK, Chairman

By: William E. Ross  
WILLIAM E. ROSS, Chief  
Milk Control Bureau

Certified to the Secretary of State October 5, 1981.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
rule 8.7.301(9), now 8.86.301(9), ) NOTICE OF THE AMEND-  
as it relates to amendment of inter-) MENT OF RULE 8.7.301(9),  
plant transfers ) NOW 8.86.301(9).

TO: All Interested Persons:

1. On June 25, 1981, the Board of Milk Control published notice of the proposed amendment of a rule relating to inter-plant transfers of milk.

2. Several statements were received by the proposing parties with regard to the proposed amendments to the rule and in support of the proposed rate changes.

3. The Board has determined that there are insufficient facts of record in this matter to warrant the proposed change and the rule will remain as it is currently published in ARM.

4. The authority of the Board to make the proposed amendment is Section 81-23-302, MCA.

BY ORDER OF THE BOARD OF MILK  
CONTROL  
CURTIS COOK, Chairman

By: William E. Ross  
WILLIAM E. ROSS, Chief  
Milk Control Bureau

Certified to the Secretary of State October 5, 1981.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF THE AMENDMENT  
rule 8.7.301 (10) (a) (v), (a) (xv)) OF RULE 8.7.301 (10) (a)  
(b) (Fi) (Gi), now 8.86.301 (1) (a)) (v), (a) (xv) (b) (Fi)  
(v), (a) (xv) (b) (F) (C), as it ) (Gi), now 8.86.301 (10)  
relates to amendment of farm to ) (a) (v), (a) (xv) (b)  
plant hauling. (Statewide Hearing ) (F) (G).  
August 4 and 5, 1981.) )

TO: All Interested Persons:

1. On June 25, 1981, the Board of Milk Control published notice of the proposed amendment of a rule relating to farm to plant hauling rates. (Rule 8.7.301 (10) (a) (v), (a) (xv) (b)). The notice was published at page 589 of the Montana Administrative Register, issue number 12.

2. The agency has amended as follows:

8.86.301 PRICING RULES.

(a) Definitions as used in this paragraph are as follows:

(v) Gas, diesel fuel, oil and lubricants costs are defined as those amounts actually recorded and used in bulk tank trucks on specific farm-to-plant routes. For every seven cents (\$.07) increase or decrease in the cost of gas and diesel fuel, the rate of hauling would automatically increase or decrease one cent (\$.01) per hundredweight.

(xv) Hauling rates. The term hauling rates as used in this rule means the rate charged producers for hauling milk from farm-to-plant. The hauling rate is to be based on the cost of hauling for the six lowest months of the plants total production for the year, for each route, to compensate for an inflationary factor.

3. Comments were received on all of the proposed changes in the rule as submitted in the Public Hearing. The Board determined that only the above changes were warranted. The proposed change in the reporting requirements was deemed to create an unnecessary administrative burden on the haulers. The other proposed amendment was deemed to create a guaranteed profit for haulers and therefore unacceptable to the Board.

4. The authority of the Board to make the proposed amendment is Section 81-23-302, MCA.

BY ORDER OF THE BOARD OF MILK  
CONTROL  
CURTIS COOK, Chairman

By: William E. Ross  
WILLIAM E. ROSS, Chief  
Milk Control Bureau

Certified to the Secretary of State October 5, 1981.

Montana Administrative Register

19-10/15/81


STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF VETERINARIANS

In the matter of the repeal ) NOTICE OF REPEAL OF ARM 40.62.  
of Sub-Chapter 6, rules ARM ) 601 (8.64.601) through 40.62.611  
40.62.601 (8.64.601) through ) (8.64.611), Sub-Chapter 6,  
40.62.611 (8.64.611) concern- ) VETERINARY TECHNICIANS  
ing veterinary technicians. )

TO: All Interested Persons:

1. On August 27, 1981, the Board of Veterinarians published a notice of repeal of rules ARM 40.62.601 (8.64.601) through 40.62.611 (8.64.611) at page 881, 1981 Montana Administrative Register, issue number 16.
2. The board has repealed the rules exactly as proposed.
3. No comment or testimony was received.

BOARD OF VETERINARIANS  
WILLIAM A. ROGERS, D.V.M.  
PRESIDENT

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 5, 1981.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the        )       NOTICE OF THE ADOPTION OF RULE  
ADOPTION OF A RULE        )       8.80.601.  
concerning bank invest-)   
ment and agriculture     )   
credit corporations        )

TO: All Interested Persons:

1. On July 20, 1981, the Department of Commerce published notice of a proposed adoption of a rule concerning investment by banks in agricultural credit corporations at page 700 of the 1981 Montana Administrative Register, issue number 14.

2. The agency has adopted the rule with the following changes:

8.80.601 CONDITIONS OF INVESTMENT. (1) A bank organized under the laws of Montana may invest in a wholly-owned agricultural credit corporation under the following conditions:

(a) The investment in shares of or loans to the agricultural credit corporation by a bank shall be limited to two (2) times the legal lending limit of the bank, i.e., 40 percent (40%) of the bank's unimpaired capital and surplus plus 40 percent (40%) of the outstanding debentures or capital notes issued under the authority of Section 32-1-413, MCA.

(b) Any loan or series of loans made to one borrower by the agriculture credit corporation (corporation) shall not exceed the lending limit of the bank.

(c) The directors of the corporation shall execute a resolution or adopt a by-law which makes available all of the records of the corporation to the Commissioner of Financial Institutions of Montana and his examining personnel without restriction.

(2) A bank operating under the laws of Montana may invest in a agricultural credit corporation owned by two or more investors under the same conditions listed in (1) if the bank owns 80 percent (80%) or more of the outstanding stock of the corporation. A bank owning less than 80 percent (80%) of the stock of the corporation must limit its investment to its statutory lending limit under the Montana Code Annotated and must follow the conditions in (b) (c) above.

(3) Any bank operating under the laws of Montana shall notify the Commissioner of Financial Institutions of its intentions to invest in an agriculture credit corporation. If the bank does not receive from the Commissioner within thirty (30) days after he has received the above notice, a statement disapproving the investment for stated reasons, the bank may proceed with the investment in the agriculture credit corporation.

(4) For the purpose of this rule, an agricultural credit corporation is defined as a corporation organized to make available to banks the right to sell or rediscount loans

available through the Federal Intermediate Credit Bank or any government agricultural lender.

(5) For the purpose of this rule, a loan means extensions of credit to agricultural producers or agribusinesses which are eligible for rediscount or sale to the Federal Intermediate Credit Bank or other government agency.

3. A representative of the Montana Banker's Association was present to discuss the rule, and offered no statements in opposition. No adverse testimony was received.

4. The authority for the rule is Section 32-1-362, implementing the same section.

GARY BUCHANAN, Director  
Department of Commerce

By:   
L. W. ALKE, Commissioner of  
Financial Institutions

Certified to the Secretary of State October 5, 1991.

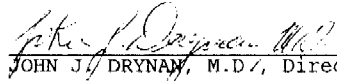
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF THE ADOPTION
of rules concerning vital )	OF RULES
records )	16.6.101, 16.6.105,
	16.6.106, 16.6.310,
	16.6.602, 16.6.902.

TO: All Interested Persons

1. On August 27, 1981, the department published notice of a proposed adoption of rules 16.6.101 concerning duties of local registrars; 16.6.105 concerning preservation of old records; 16.6.106 concerning affidavits for correction of birth or death certificates; 16.6.310 concerning information to be included in certificates of adoption; 16.6.602 concerning reports of dissolution or invalidity of marriage; and 16.6.902 concerning fetal death certificates at pages 885 - 892 of the 1981 Montana Administrative Register, issue number 16.

2. The department has adopted the rules as proposed.
3. No comments or testimony were received.

  
\_\_\_\_\_  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 5, 1981



BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT
amendment of rules	)	OF RULES
concerning vital records	)	16.6.103, 16.6.104,
		16.6.109, 16.6.110,
		16.6.116, 16.6.301,
		16.6.302, 16.6.303,
		16.6.309, 16.6.601,
		16.6.901, 16.6.903,
		16.6.906, 16.6.916,
		16.6.1601, 16.24.803.

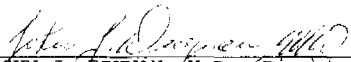
TO: All Interested Persons

1. On August 27, 1981, the department published notice of proposed amendments of the following rules:

16.6.103 PRESERVATION OF COPIES OF RECORD  
16.6.104 CERTIFICATES UNFADING, PERMANENT AND LEGIBLE  
16.6.109 MONTHLY STATEMENT OF RETURNS  
16.6.110 PAYMENT OF FEES TO LOCAL REGISTRARS  
16.6.116 FEES FOR COPIES AND RESEARCH  
16.6.301 CERTIFICATE OF BIRTH  
16.6.302 PARENT TO REVIEW BIRTH CERTIFICATE  
16.6.303 DELAYED BIRTH RECORDS  
16.6.309 CHILDREN BORN OUT OF WEDLOCK, CERTIFICATE FOR  
16.6.601 MARRIAGE APPLICATIONS  
16.6.901 DEATH CERTIFICATE  
16.6.903 HEALTH OFFICERS NOTIFIED BY REGISTRAR, WHEN  
16.6.906 BURIAL TRANSIT PERMIT  
16.6.916 DISINTERMENT PERMITS  
16.6.1601 INFORMATION RECORDED  
16.24.803 FACILITY REPORT (abortion reporting forms)  
at page 894 - 918 of the 1981 Montana Administrative Register,  
issue number 16.

2. The department has amended the rules as proposed.

3. No comments or testimony were received.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 5, 1981

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF THE REPEAL
of rule 16.6.801-Definitions;	)	OF RULES
16.6.802-Report of Induced	)	16.6.801, 16.6.802
Abortion; 16.6.907-Burial,	)	16.6.907, 16.6.1801
Transit Permit Issuance;	)	
and 16.6.1801-Information	)	
Recorded	)	

TO: All Interested Persons

1. On August 27, 1981, the department published notice of proposed repeal of the following rules:

16.6.801 DEFINITIONS  
16.6.802 REPORT OF INDUCED ABORTION  
16.6.907 BURIAL, TRANSIT PERMIT ISSUANCE  
16.6.1801 INFORMATION RECORDED (communal colonies)  
at pages 893, 911 and 915 of the 1981 Montana Administrative Register, issue number 16.

2. The department has repealed rules 16.6.801 and 16.6.802 found on pages 16-111 - 16-112; rule 16.6.907 found on page 16-114; and rule 16.6.1801 found on page 16-115 of the Administrative Rules of Montana.

3. No comments or testimony were received.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 5, 1981

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the adoption        )       NOTICE OF  
of rules establishing a                )       ADOPTION OF RULES  
procedure for variances from        )       (Solid Waste Management-  
solid waste management rules        )       Variances)

To: All Interested Persons

1. On August 13, 1981, the Department of Health and Environmental Sciences published notice of a proposed adoption of rules establishing a procedure for variances from solid waste management rules at pages 794-796 of the Montana Administrative Register, issue number 15.

2. The Department has adopted the rules with the following changes:

16.14.602 [RULE 1] INITIAL APPLICATION (1) A person may apply for a variance from solid waste management rules contained in sub-chapter 5, chapter 14, Title 16 of the Administrative Rules of Montana on forms obtained from the department. Such forms must contain at least the following information:

- (a) Name and business address of applicant.
- (b) Legal and general description of the location of the solid waste management system for which the variance is being requested including documentation of ownership, lease or rental agreement.
- (c) Population served by the system.
- (d) Citation of administrative rule from which a variance is requested.
- (e) Documentation of liability insurance coverage.
- (f) Financial statements of the operation costs of the solid waste management system including sources of revenues and the proposed costs to operate the system in compliance with the rule from which a variance is sought.
- (g) Copy of a return receipt of a certified letter sent to each owner of real property which is contiguous to the real property on which the solid waste management system is located and to the owner, if other than the applicant, of the real property on which the solid waste management system is located.

(1) The certified letter required in subsection (g) of this rule must state: "1, (name of applicant), intend to apply to the Board of Health and Environmental Sciences of the State of Montana for a variance from (citation of rule from which variance is sought), which states: (text of rule). A hearing will be scheduled before the Board on the variance application. For further information, you may contact the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620 (telephone number: 449-2821)."

(h) A compliance plan indicating the dates by which improvements will be implemented at the solid waste management system to bring it into compliance with the rule from which a variance is sought.

(2) An application for a variance is not considered filed until the applicant has submitted all information and completed all application forms required by subsection (1) of this rule.

16.14.603 [RULE II] NOTICE (1) Upon notification by the department that the variance application is complete, the applicant must publish the notice provided to him by the department once in a newspaper of general circulation in the geographical area within which the solid waste management system is located. This notice must be published not less than 45 days before the date of the hearing on the variance application before the Board.

(2) The contents of the public notice must include at least the following:

(a) Name and address of the applicant;

(b) Citation and text of the administrative rule from which a variance is sought;

(c) Time, location and brief description of the purpose of the hearing,

(d) Address and phone number of the office at which interested persons may obtain further information, and inspect or obtain a copy of the application;

(e) The deadline as established by the hearing examiner for making a request to participate in the hearing; and

(f) Name and address of the hearing examiner to whom a request to participate is made.

(3) The applicant shall provide to the department a certification from the newspaper indicating the notice was published as required or a copy of the publication. The certification must be received by the department not less than 20 days prior to the board hearing. Failure of the applicant to provide certification at least 20 days prior to the hearing renders the application incomplete and causes cancellation of the scheduled hearing.

16.14.604 [RULE III] PARTICIPATION IN HEARING Same as proposed.

16.14.605 [RULE IV] CONDUCT OF HEARINGS Same as proposed.

16.14.606 [RULE V] DURATION OF VARIANCE Same as proposed.

16.14.607 [RULE VI] VARIANCE REVIEW HEARING--REVOCATION--MODIFICATION (1) A variance review hearing to modify or revoke a variance may be held before the board at the request of the department during the term of a variance if:

(a) a violation ~~violations~~ of a condition ~~the-conditions~~ of the variance ~~occur~~ occurs; or

(b) a complaint is ~~complaints-are~~ received by the department from a property owners ~~owner~~ or a residents ~~resident~~ affected by the solid waste management system operating under the variance.

(2) The board may revoke or modify a variance if it finds a condition ~~the-conditions~~ of the variance has been violated or if it finds a complaint ~~the-complaints~~ received by the department warrants ~~warrant~~ revocation or modification.

16.14.608 [RULE VII] RENEWAL OF A VARIANCE Same as proposed.

3. Comment: U.S. Department of Agriculture requested that a clause be added that no variance will be considered for those requirements as established by federal regulation for landfills located on federal lands.

Response: The Department accepts this comment and will, through another notice, propose that the term "Act" in section 75-10-206, MCA, mean the Resource and Recovery Act, as amended, and rules implementing that Act.

Comment: USDA requested a requirement that variances involving federal lands not be considered until the proposal is discussed with the appropriate federal land manager.

Response: The Department added language in Rule I to require notice to USDA of the intent to apply for a variance.

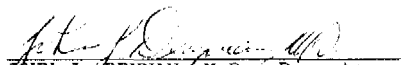
Comment: The Beaverhead County Sanitarian, Eugene Regan, questioned why notice is required to contiguous landowners and commented that the notice to landowners is too early in light of the public hearing date.

Response: Section 75-10-206(2), MCA, requires that the board, in granting a variance, consider "relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration." The Department believes the most effective way to implement this directive is to give notice to contiguous landowners well enough in advance to allow them participation in the decision making process. The Department intends to mail to those landowners referred to in the application a copy of the notice which will be published in a local newspaper as required by Rule II.

Comment: Mr. Regan questioned why a person should even apply for a variance if he must eventually comply with the rules in a year or two.

Response: An applicant who is granted a variance is not excused in perpetuity from meeting the legal requirements of

the rule for which the variance is granted. To the contrary, the purpose of a variance program is to provide short-term waivers of rules which pose a hardship to meet immediately so that the applicant, during the short term of the variance, can revise his operation to meet all requirements of the program imposed by administrative rules.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 5, 1981

BEFORE THE DEPARTMENT OF HIGHWAYS  
OF THE STATE OF MONTANA

In the matter of the Amendment	)	
of Rule 18.8.601 regarding	)	
Overweight Single Trip Permits	)	
and the repeal of Rules 18.8.1202	)	NOTICE OF THE AMENDMENT
through 18.8.1215 establishing	)	OF RULE 18.8.601 AND
conditions for movement of	)	THE REPEAL OF RULES
various special vehicles.	)	18.8.1202 THROUGH 18.8.1215

TO: All Interested Persons

1. On August 13, 1981, the Department of Highways published notice of a proposed amendment to rule 18.8.601 and repeal of rules 18.8.1202 through 18.8.1215 concerning overweight single trip permits and various special vehicle movement conditions at page 798 of the 1981 Montana Administrative Register, issue number 15.

2. The agency has amended rule 18.8.601 as proposed with the substitution of paragraphs (7) and (8) as proposed by the agency in the above-mentioned notice.

3. The agency has repealed rules 18.8.1202 through 18.8.1215 as proposed.

4. Testimony of two witnesses in support of the amendment and repeal was given at the public hearing. No comments or testimony in opposition to the amendment and repeal were received.

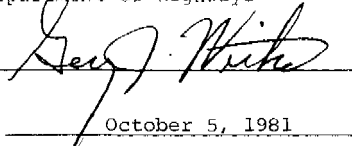
5. Rule 18.8.601 is amended to provide for greater uniformity in administration and enforcement and to facilitate the movement of vehicles with single trip overweight permits while protecting the safety of the traveling public and the highways of the state.

6. Rules 18.8.1202 through 18.8.1215 are repealed as being unnecessary with the amendment of Rule 18.8.601.

7. The authority of the agency to make the amendment and repeal is implied in section 61-10-121, MCA, and the rule implements Sections 61-10-101 through 61-10-148, MCA.

Gary J. Wicks, Director  
Department of Highways

By: \_\_\_\_\_



Certified to the Secretary of State \_\_\_\_\_ October 5, 1981

19-10/15/91

Montana Administrative Register

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

IN the Matter of the Amendment	)	NOTICE OF AMENDMENT
of the Attorney General's Model	)	TO THE MODEL RULES
Rules for Use with the Admini-	)	1.3.101 THROUGH
strative Procedure Act	)	1.3.234

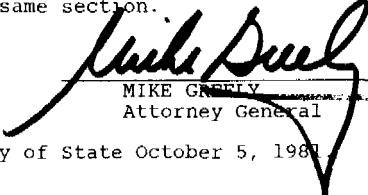
TO: All Interested Persons

1. On August 13, 1981, the Department of Justice published notice of proposed amendments to the Model Rules 1.3.101 through 1.3.234 at page 802 of the Montana Administrative Register, Notice No. 23-2-59.

2. The Agency has amended the rules substantially as proposed, but with minor changes. The rules are printed on the following pages.

3. Comments were received from the Legislative Council and from Julie Glosser of the Secretary of State's Office. These comments and the proposed changes to the Amendments were adopted.

4. The authority for the Amendments is 2-4-202, MCA, and the rules implement that same section.

  
\_\_\_\_\_  
MIKE GREELY  
Attorney General

Certified to the Secretary of State October 5, 1981.



SUB-CHAPTER 1

PROCEDURAL RULE REQUIRED BY MCA CHAPTER IMPLEMENTING  
ARTICLE II, SECTION 8 OF THE 1972 CONSTITUTION -  
RIGHT OF PARTICIPATION.

1.3.101 INTRODUCTION. (1) All section numbers refer to the Montana Code Annotated. Section 2-3-103(1) directs each agency to adopt procedural rules to facilitate public participation in agency actions that are of significant interest to the public. "Agency" is defined by section 2-3-102(1). Note that exceptions to the term "agency" are fewer under this section than the Montana Administrative Procedure Act, section 2-4-102(2). "Agency action" is defined by section 2-3-102(3); exceptions are listed in section 2-3-112. An Appendix of sample forms follows the test of the rules. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. 1199, Eff. 10/12/79.)

1.3.102 Model Rule 1 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC. (1) In accordance with sections 2-3-102 through 2-3-114, prior to making a final decision that is of significant interest to the public, the agency shall afford reasonable opportunity for public participation. Public participation may be afforded by:

(a) any of the agency actions allowed pursuant to section 2-3-104; or

(b) a notice of the proposed agency action published in the Montana Register in accordance with sample form 1, infra. The agency may grant or deny an opportunity for hearing.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. 1200, Eff. 10/12/79; AMD 1981 MAR p. 1196, Eff. 10/16/81.)

SUB-CHAPTER 2

ORGANIZATIONAL AND PROCEDURAL RULES REQUIRED BY  
THE MONTANA ADMINISTRATIVE PROCEDURE ACT

1.3.201 INTRODUCTION. (1) All section numbers refer to the Montana Code Annotated. The Montana Administrative Procedure Act includes section 2-4-101 through 2-4-711.

The Act outlines procedures that agencies must follow when:

- (a) adopting, amending or repealing agency rules;
  - (b) hearing contested cases; or
  - (c) issuing declaratory rulings.
- (2) Each agency subject to the Act must adopt rules describing its organization and procedures. Section 2-4-201. Section 2-4-202 directs the Attorney General to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. The model rules have been adopted for that purpose. The model rules may be incorporated by reference to the model rules. Subsequent amendments may be adopted only by following the rule making procedure of the Act. See 2-4-307. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1200, Eff. 10/12/79; AMD 1981 MAR p. 1197 , Eff. 10/16/81.)

#### 1.3.202 APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

The Act applies to all state agencies as defined in section 2-4-102(2). Note that the state board of pardons is subject to only the sections enumerated in sections 2-4-103, 2-4-201, 2-4-202 and 2-4-306 and the requirement that its rules be published. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1200, Eff. 10/12/79.)

1.3.203 ORGANIZATIONAL RULE. (1) An agency need not comply with the Montana administrative procedure act notice and hearing requirements when adopting an organizational rule. Section 2-4-201(1).

(2) The organizational rule must be reviewed biennially to determine whether it should be modified. Section 2-4-314.

(3) The organizational rule should contain the following as illustrated by sample form 2, infra:

- (a) the items required by section 2-4-201(1),
- (b) charts showing both the organization of the agency and the functions of each division, indicating those divisions without rulemaking authority, and

(c) in the spirit of the rule, a personnel roster of agency heads, divisions heads and other key personnel should be appended to the rule. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p.1200, Eff. 10/12/79; AMD 1981 MAR p. 1197 , Eff. 10/16/81.)

1.3.204 RULE MAKING, INTRODUCTION. (1) Title 2, Chapter 4, Part 3 prescribes procedures to be followed by agencies when adopting, amending or repealing rules.

(2) See section 2-4-102(10) for the definition of "rule". Because of the difficulty in determining whether an agency action falls within the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel. Interpretive rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute, but are advisory only and do not have force of law.

(3) Rule making checklist. Rule making under the Administrative Procedure Act involves three steps.

☐ Notice of proposed agency action. See model rule 3.

☐ Opportunity to be heard.

The agency must allow at least 28 days for interested persons to submit comments in writing to the agency. Except where otherwise required by law, an agency must hold a public hearing only if its proposed action affects a substantive rule and a hearing is requested by either:

- (a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action,
- (b) a governmental subdivision or agency,
- (c) an association having not less than 25 members who will be directly affected, or
- (d) the Administrative Code Committee of the Legislature. See model rule 4.

☐ Agency action. See model rule 5.

(4) Temporary emergency rules may be adopted without prior notice or hearing or after abbreviated procedures. This is discussed in model rule 6. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1204, Eff. 10/12/79.)

1.3.205 Model Rule 2 RULE MAKING, PETITION TO PROMULGATE, AMEND OR REPEAL RULE.

(1) Section 2-4-315 authorizes an interested person or member of the legislature acting on behalf of an interested person when the legislature is not in session, to petition an agency to promulgate, amend or repeal a rule.

(a) The petition shall be in writing, signed by or on behalf of the petitioner and shall contain, as illustrated by sample form 3, infra, a detailed statement of:

(i) the name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended or repealed,

(ii) sufficient facts to show how petitioner will be affected by adoption, amendment or repeal of the rule,

(iii) the rule petitioner requests the agency to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom interlined and proposed additions thereto shown by underlining,

(iv) facts and propositions of law in sufficient detail to show the reasons for adoption, amendment or repeal of the rule.

(b) Legislators may petition an agency on behalf of interested parties through an informal letter or memorandum. The petition should include the name of the person or a description of a class of persons on whose behalf the legislator acts. Petitions filed by the Administrative Code Committee of the legislature need not be brought on the behalf of any specifically interested party. Any petition from the legislature or its members should comply with (1)(a)(iii) and (iv) of this rule.

(2) The petition shall be considered filed when received by the agency.

(3) Upon receipt of the petition, the agency:

(a) must make a timely ruling on the petition pursuant to section 2-4-315.

(b) may schedule oral presentation of petitioner's views if the agency wishes to hear petitioner orally.

(c) must, within 60 days after date of submission of the petition, either:

(i) issue an order denying the petition, stating its reasons for the denial, and mail a copy to the petitioner and all other persons upon whom a copy of the petition was served, or

(ii) initiate rule making proceedings in accordance with the Administrative Procedure Act. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1207, Eff. 10/12/79; AMD 1981 MAR p. 1199 , Eff. 10/16/81.)

#### 1.3.206 Model Rule 3 RULE MAKING, NOTICE.

(1) How notice is given. Section 2-4-302.

(a) An agency shall publish notice of intent to adopt, amend or repeal a rule in accordance with sections 2-4-302(2) and (3).

(b) An agency may send a copy of the notice to a state-wide wire service and any other news media it considers appropriate. Section 2-3-105.

(c) Whenever practicable and appropriate, the agency may send written notice to licensees of the agency. Section 2-4-631(3).

(2) Notice of agency action must be published within 6 months of the date on which notice of the proposed action was published. Section 2-4-305(6).

(3) Contents of notice.

(a) Notice of public hearing.

(i) As illustrated by sample forms 4, 5 and 6, infra, the notice must include:

(A) All notice items required by section 2-4-302(1).

(I) The agency may issue a single public notice that it intends to adopt, amend and repeal several rules dealing with the same subject matter in a single proceeding.

(II) Whenever possible the agency should include in the notice a copy of any rule proposed to be adopted, amended or repealed. Summaries and paraphrasing are to be used when it is not possible to include a copy of the proposed rule in the notice. Such summaries and paraphrasing must accurately reflect the substance of the proposed agency actions.

(III) An agency may adopt a rule which adopts by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule or other publication would be unduly cumbersome, expensive or otherwise inexpedient. The notice must contain a citation to the material adopted by reference, a statement of its general subject matter content, and must state where a copy of the material may be obtained. Amendments to incorporated material are not effective unless adopted pursuant to 2-4-307.

(B) a citation to the authority for the proposed rule, and citation to the MCA section or sections being implemented. If the proposed action implements a policy of a governing board or commission, the notice must include a citation to and description of the policy implemented.

(C) a designation of the officer or authority who will preside at and conduct the hearing.

(b) Notice when agency does not plan to hold a public hearing.

(i) As illustrated by sample forms 7 through 13, infra, the notice must include:

(A) all notice items required by section 2-4-302(1).

(B) a statement that any interested person desiring to express or submit his data, views or arguments at a public hearing must request the opportunity to do so; and that if 10% or 25, whichever is less, of the persons directly affected or a governmental subdivision or agency; or an

association having not less than 25 members who will be directly affected; or the legislature's Administrative Code Committee request; a hearing will be held after appropriate notice is given. Reference to the Administrative Code Committee is unnecessary if the full legislature, by joint resolution, has ordered the repeal of a rule;

(C) a statement of the number of persons directly affected who constitute 10%;

(D) the name and address of the person to whom request for public hearing must be submitted; and the date by which a request must be submitted; and

(E) a citation to the authority for the rule and the code section or sections being implemented.

(c) Notice of public hearing when a hearing has been properly requested. When a hearing has been properly requested, the agency must mail notice of the hearing to persons who have requested a public hearing, Section 2-4-302. Also, notice must be published in the Montana Administrative Register. Section 2-4-302(2).

(ii) As illustrated by sample form 13, infra, the notice must include:

(A) all information required in section (3)(a)(i) of this rule; and

(B) notice that the hearing is being held upon request of the requisite number of persons designated in the original notice, section 2-4-302(4), or the Administrative Code Committee of the Legislature, section 2-4-402(3)(c) or a governmental agency or subdivision, or an association.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1219, Eff. 10/12/79; AMD 1981 MAR p. 1201 , Eff. 10/16/81.)

#### 1.3.207 Model Rule 4 OPPORTUNITY TO BE HEARD.

(1) Written comment. When an agency is not required and does not wish to hold a public hearing, the person designated in the notice to receive written comments from interested persons shall review all submissions within a reasonable time after the period for comment has ended. Section 2-4-305(1). That person then shall prepare a written summary of the comments and submit this report to the rule maker.

#### (2) Public hearing.

(a) Except as otherwise provided by statute, public hearings shall be conducted in the following manner:

(i) The hearing shall be conducted by and under the control of a presiding officer. The presiding officer shall be appointed by the rule maker; that is, the department,

board, or administrative officer authorized by law to make rules for the agency. The rule maker retains the ultimate authority and responsibility to insure that the hearing is conducted in accordance with the Administrative Procedure Act.

(ii) At the commencement of the hearing, the presiding officer shall ask that any person wishing to submit data, views or arguments orally or in writing submit his name, address, affiliation, whether he favors or opposes the proposed action, and such other information as may be required by the presiding officer for the efficient conduct of the hearing. The presiding officer shall provide an appropriate form for submittal of this information.

(iii) At the opening of the hearing, the presiding officer shall read or summarize the notice that has been given in accordance with model rule 3, and shall read the "Notice of Function of Administrative Code Committee" appearing in the register.

(iv) subject to the discretion of the presiding officer, the order of presentation may be:

(A) statement of proponents;

(B) statement of opponents;

(C) statements of any other witnesses present and wishing to be heard.

(v) The presiding officer or rule maker has the right to question or examine any witnesses making a statement at the hearing. The presiding officer may, in his discretion, permit other persons to examine witnesses.

(vi) There shall be no rebuttal or additional statements given by any witness unless requested by the presiding officer, or granted for good cause. If such statement is given, the presiding officer shall allow an equal opportunity for reply.

(vii) The hearing may be continued with recesses as determined by the presiding officer until all witnesses present and wishing to make a statement have had an opportunity to do so.

(viii) The presiding officer shall, where practicable, receive all relevant physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibits. In the discretion of the agency the exhibits may be preserved for one year after adoption of the rule or returned to the party submitting the exhibits, but in any event the agency shall preserve the exhibits until at least 30 days after the adoption of the rule.

(ix) The presiding officer may set reasonable time limits for oral presentation.

(x) A record must be made of all the proceedings, either in the form of minutes or a verbatim written or mechanical record.

(b) The presiding officer shall, within a reasonable time after the hearing, provide the rule makers with a written summary of statements given and exhibits received and a report of his observations of physical experiments, demonstrations and exhibits.

(3) Informal conferences or consultations. In addition to the required rule making procedures, an agency may obtain viewpoints and advice concerning proposed rulemaking through informal conferences and consultations or by creating committees of experts or interested persons or representatives of the general public Section 2-4-304(2). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1220, Eff. 10/12/79; AMD 1981 MAR p. 1203, Eff. 10/16/81.)

1.3.208 Rule 5 RULE MAKING, AGENCY ACTION. (1) Introduction. Thirty days after publication of notice and following receipt of the presiding officer's report, the rule maker may adopt, amend or repeal rules covered by the notice of intended action. 2-4-302(2).

(2) Notice of rule making. Upon adoption, amendment or repeal of a rule, the agency must file notice of its action with the secretary of state. 2-4-306(1).

(a) As illustrated by sample form 15, infra, the notice must include:

(i) either the text of the rule adopted or amended, reference to the notice of proposed agency action in which the text of the proposed rule or rule as proposed to be amended was printed in full, or reference to the page number of the Administrative Rules of Montana on which the rule appears,

(ii) if the rule adopts a model code, rule or other publication by reference, a citation to the material adopted, a statement of the general subject matter thereof, and where a copy of the material may be obtained. The material adopted by reference need not be published if publication would be unduly cumbersome, expensive or otherwise inexpedient. Upon request of the secretary of state a copy of the omitted material must be filed with the secretary of state. See 2-4-307.

(iii) a statement of the principal reasons for and against the adoption, amendment or repeal of a rule that was presented by interested persons. The statement also must



include the agency's reasons for overruling the considerations urged against the agency action. If substantial differences exist between the rule as proposed and as adopted, and the differences have not been described or set forth in the adopted rule, the differences must be described in the statement of reasons for and against the agency action. The statement may be omitted if no written or oral submissions were presented. Section 2-4-305(1). See Patterson v. Montana Department of Revenue, 557 P.2d 798 (1976).

(3) Effective date. The agency action is effective on the day following publication of the notice in the Montana Administrative Register unless a later date is required by statute or specified in the notice. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1223, Eff. 10/12/79; AMD 1981 MAR p. 1204 , Eff. 10/16/81.)

### 1.3.209 Rule 6 RULE MAKING, EMERGENCY RULES.

(1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice, it may adopt a temporary emergency rule without prior notice or hearing or, as illustrated by sample form 16, infara, upon any abbreviated notice and hearing that it finds practicable. (Section 2-4-303(1)).

(2) To adopt an emergency rule the agency must:

(a) File with the secretary of state a copy of the emergency rule and a statement in writing of its reasons for finding that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice. Section 2-4-306(4)(b).

(b) Take appropriate measures to make emergency rules known to persons who may be affected by them, section 2-4-306(4)(b), including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate. Section 2-3-105.

(3) Effective date of temporary rule. An emergency rule becomes effective upon filing a copy with the secretary of state or on a stated date following publication in the Montana Administrative Register. Section 2-4-306(4)(b).

(4) Duration of emergency rule. An emergency rule may be effective for a period not longer than 120 days, and may not be renewed. The agency may, however, adopt an identical, permanent rule after notice and hearing in accordance with model rules 2 through 5. Section 2-4- 303(1).

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1225, Eff. 10/12/79; AMD 1981 MAR p. 1205, Eff. 10/16/81.)

1.3.210 Model Rule 7 RULE MAKING, BIENNIAL REVIEW.

Each agency must at least biennially review its rules to determine whether any rule should be adopted or any existing rule should be modified or repealed. Section 2-4-314. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1225, Eff. 10/12/79.)

1.3.211 CONTESTED CASES, INTRODUCTION.

(1) A rule is an agency determination of general applicability to all persons who come within its terms. In contrast, a contested case involves an agency determination applicable to a specifically named party. "Contested case" and "party" are defined by section 2-4-102. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1225, Eff. 10/12/79.)

1.3.212 Model Rule 8 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD.

(1) All parties to contested cases shall be afforded notice of hearing pursuant to section 2-4-601(1). As illustrated by sample form 17, *infra*, the notice must include:

(a) All items required by section 2-4-601(2).

(b) A provision advising parties of their right to be represented by counsel at the hearing. Section 2-4-105.

(c) A statement either staying the agency action or detailing at what point the party's legal rights, duties or privileges will be revoked or imposed.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1226, Eff. 10/12/79; AMD 1981 MAR p. 1205, Eff. 10/16/81.)

1.3.213 Model Rule 9 CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE.

(1) Section 2-4-631(3) provides:

"...If the agency finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for

revocation or other action. These proceedings shall be promptly instituted and determined."

(a) See sample form 17.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1228, Eff. 10/12/79.)

1.3.214 Model Rule 10 CONTESTED CASES, DEFAULT ORDER.

(1) If a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered the order must contain findings of fact and conclusions of law. Section 2-4-623.

(a) See sample form 19.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1228, Eff. 10/12/79.)

1.3.215 Model Rule 11 CONTESTED CASES, INFORMAL DISPOSITION.

(1) Informal disposition of contested cases is permissible pursuant to section 2-4-603.

(2) Any informal proceedings must be conducted in accordance with the provisions of section 2-4-604.

(3) An informal conference, in the nature of a pre-trial conference, may be used to define issues, determine witnesses and agree upon stipulations. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1229, Eff. 10/12/79.)

1.3.216 Model Rule 12 CONTESTED CASES. APPLICATION FOR MORE DEFINITE AND DETAILED STATEMENT.

Upon application to the agency or the designated hearing examiner, a party who has been given notice of a hearing may apply for a more definite and detailed statement of the issues involved in the hearing. Section 2-4-601 (2)(d). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1230, Eff. 10/12/79.)

1.3.217 Model Rule 13 CONTESTED CASES, DISCOVERY.

(1) Section 2-4-602 requires each agency to provide in its rules for discovery prior to a contested case hearing.

(2) In all contested cases discovery shall be available to the parties in accordance with Rules 26, 28 through 37 (except Rule 37(b)(1) and 37(b)(2)(d)) of the Montana Rules of Civil Procedure in effect on the date of the

adoption of this rule and any subsequent rule amendments thereto. Provided, however, all references to the "court" shall be considered to refer to the appropriate "agency"; all references to the use of the subpoena power shall be considered references to model rule 25; all references to "trial" shall be considered references to "hearing"; all references to "plaintiff" shall be considered references to "a party"; all references to "clerk of court" shall be considered references to the person designated by the department head to keep documents filed in a contested case.

(3) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey such agency order shall be enforced as provided in model rule 25.

(4) If a party seeking discovery from the agency in which the action is pending believes he has been prejudiced by a protective order issued by the agency under Rule 26(c) M.R.Civ.P., or if the agency refuses to make discovery, that party may petition the district court for review of the intermediate agency action under section 2-4-701. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. 1230, Eff. 10/12/79.)

1.3.218 Model Rule 14 CONTESTED CASES, HEARING EXAMINERS.

(1) Section 2-4-611 allows the agency to appoint hearing examiners for the conduct of hearings in contested cases.

(2) The powers of the agency members or hearing examiners presiding over hearings are enumerated in section 2-4-611(3).

(3) If a defending party notifies the agency that he will appear at the hearing to contest the intended action, the agency must advise all parties of the appointment of either an agency member or a hearing examiner to manage the case, as illustrated by sample form 20, infra.

(4) Disqualification of a hearing examiner or agency member is provided for under section 2-4-611(4). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1231, Eff. 10/12/79; AMD 1981 MAR p. 1207 , Eff. 10/16/81.)

1.3.219 Model Rule 15 CONTESTED CASES, HEARING.

(1) The hearing shall be conducted before the decision-making authority of the agency or a hearing officer designated in accordance with Model Rule 14.

(2) At the discretion of the presiding officer, the

hearing may be conducted in the following order:

(a) statement and evidence of agency in support of its action,

(b) statement and evidence of affected parties supporting agency action,

(c) statement and evidence of affected parties disputing agency action,

(d) rebuttal testimony.

(3) The hearing may be continued with recesses as determined by the presiding officer. Section 2-4-611(2).

(4) The hearing shall proceed in compliance with sections 2-4-612(1), (4) and (5).

(5) The presiding officer must insure that all parties are afforded the opportunity to respond and present evidence and argument on all issues involved. Section 2-4-612(1).

(6) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the agency as part of the record of the proceedings. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1232, Eff. 10/12/79.)

1.3.220 Model Rule 16 CONTESTED CASES, RECORD.

(1) The record in a contested case shall include all items required by section 2-4-614(1).

(2) The record shall be transcribed and the costs of transcription paid as provided in section 2-4-614(2). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1232, Eff. 10/12/79.)

1.3.221 Model Rule 17 CONTESTED CASES, EVIDENCE.

(1) All evidence introduced in a contested case hearing shall be received and evaluated in conformance with sections 2-6-612(2), (3), (6) and (7). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1232, Eff. 10/12/79.)

1.3.222 Model Rule 18 CONTESTED CASES, EX PARTE CONSULTATIONS.

Section 2-4-613 protects all parties in a contested case from informal conferences between the agency and one of the parties. Such conferences may only occur under the circumstances and requirements provided in that section. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1232, Eff. 10/12/79.)

1.3.223      Model Rule      19      CONTESTED CASES, PROPOSED ORDERS.

(1) If a majority of the officials of the agency who are to render the final decision have not heard the case, a proposed decision must be prepared and served pursuant to sections 2-4-621(1), (2) and (4).

(a) If the hearings officer becomes unavailable, proposed findings of fact may be prepared pursuant to section 2-4-622.

(b) All parties shall be given equal opportunities to file exceptions and present briefs and oral argument.

(c) All parties should be informed of any appeal or review procedures provided by the agency.

(2) The parties may waive compliance with this rule by written stipulation.

(3) The agency may adopt the proposed decision as the agency's final order, pursuant to section 2-4-621(3). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1233, Eff. 10/12/79; AMD 1981 MAR p. 1209, Eff. 10/16 '81.)

1.3.224      Model Rule      20      CONTESTED CASES, FINAL ORDERS.

(1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record, and contain findings of fact and conclusions of law. These requirements shall all be fulfilled pursuant to sections 2-4-623(1) through (4).

(2) See sample form 21.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1234, Eff. 10/12/79.)

1.3.225      Model Rule      21      CONTESTED CASES, NOTICE OF FINAL DECISION.

(1) Parties to contested cases and their attorneys shall be notified of any decision or order pursuant to section 2-4-623(5). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. 1235, Eff. 10/12/79.)

1.3.226      DECLARATORY RULINGS, INTRODUCTION.

(1) A person taking or wishing to take a particular action may be unsure whether an agency regulation or a statute administered by an agency applies to that action. Section 2-4-501 provides that a person may petition the agency for a declaratory ruling as to the applicability of a

statute, regulation, or order, to his activity or proposed activity. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1235, Eff. 10/12/79.)

1.3.227 Model Rule 22 DECLARATORY RULINGS, CONTENT OF PETITION.

(1) A petition for declaratory ruling must be type-written or printed.

(2) The petition must include:

(a) the name and address of petitioner;  
(b) a detailed statement of the facts upon which petitioner requests the agency to base its declaratory ruling;

(c) sufficient facts to show that petitioner will be affected by the requested ruling;

(d) the rule or statute for which petitioner seeks a declaratory ruling;

(e) the questions presented;

(f) propositions of law asserted by petitioner;

(g) the specific relief requested;

(h) the name and address of any person known by petitioner to be interested in the requested declaratory ruling.

(3) See sample form 22.

(4) The record in a declaratory ruling proceeding shall include:

(a) the petition;

(b) a statement of matters officially noticed;

(c) if for good cause shown the agency has held hearings on the petition, a stenographic record of the proceedings when demanded by a party; and

(d) the ruling.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1235, Eff. 10/12/79.)

1.3.228 Model Rule 23 DECLARATORY RULINGS, DENIAL OF PETITION.

(1) If the agency denies a petition for declaratory ruling, the agency must mail a copy of the order denying the petition to all persons named in the petition.

(2) An order denying a petition must include a statement of the grounds for denial. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1237, Eff. 10/12/79.)

1.3.229 Model Rule 24 DECLARATORY RULINGS, EFFECT.

A declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1237, Eff. 10/12/79.)

1.3.230 Model Rule 25 GENERAL PROVISIONS, SUBPOENAS.

(1) Section 2-4-104 provides broad authority to agencies to require the furnishing of information, attendance of witnesses, and production of evidence through subpoena and subpoena duces tecum.

(a) subpoenas shall be issued and served pursuant to section 2-4-104(1).

(b) in the case of disobedience, an agency may compel compliance with a subpoena pursuant to section 2-4-104(2). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1237, Eff. 10/12/79.)

1.3.231 Model Rule 26 GENERAL PROVISIONS, REPRESENTATION.

(1) Section 2-4-105 affords any person appearing before the agency the right to be accompanied, represented and advised by counsel. The agency should advise a party to a contested case of his right to counsel. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1237, Eff. 10/12/79.)

1.3.232 Model Rule 27 GENERAL PROVISIONS, SERVICE.

(1) Unless otherwise provided by law, section 2-4-106 requires service on parties in accordance with requirements for service in civil actions. Unless otherwise provided by law and these rules, all motions and pleadings will be served in accordance with the Montana Rules of Civil Procedure. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1238, Eff. 10/12/79.)

1.3.233 Model Rule 28 GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS.

(1) The agency must maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders shall be available for public inspection on request. Section 2-4-623(6). Copies of final decisions and orders must be given to the



public on request after payment of the cost of duplication.  
(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff.  
12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR  
p. 1238, Eff. 10/12/79.)

APPENDIX OF SAMPLE FORMS

Sample form 1: Notice of proposed agency action.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2- ) NOTICE OF PROPOSED  
description of proposed ) AGENCY ACTION  
agency action) )

TO: All Interested Persons.

1. The (3-name of agency) proposes to (4-description of agency action; for ex: amend Model Rules 1.1.101 through 1.1.110, to provide for discovery in administrative proceedings).

2. Interested persons may submit data, views or arguments in written form or a request for opportunity to submit data, views or arguments in oral form to (5-name, address). To be considered, comments and requests must be received by (6-date at least 28 days from the day of notice. 2-4-302(4)).

name of department head or chairman of governing board must be signed by:

By: (7-Authorized person's signature)

Sample form 2: Organizational Rule. As an example, this rule describes the organization and functions of a fictitious Department of Natural Resources and Conservation and its various units, including the administratively attached Board of Oil and Gas Conservation. It should be noted that the administratively attached board is required to submit its own organizational description. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1201, Eff. 10/12/79.)

ORGANIZATIONAL RULE. (1) Organization of the Department of Natural Resources and Conservation.

(a) History. The Department of Natural Resources and Conservation was implemented under the Executive Reorganization Act of 1971 by executive order of the governor on December 20, 1971.

(b) Divisions. The department consists of the following five divisions.

- (i) Centralized Services Division
- (ii) Water Resources Division
- (iii) Forestry Division
- (iv) Conservation Districts Division
- \*(v) Oil and Gas Conservation Division

\*Attached for administrative purposes -- see separate organization description submitted by this division.

Each division is headed by an administrator. The first four of these divisions are further broken down into bureaus. (See functional charts.)

(c) Director. The director of Natural Resources and Conservation appointed by the governor heads the department. He is responsible for the administration of the department and its divisions.

(d) Board of Natural Resources and Conservation. The Board of Natural Resources and Conservation consists of five members appointed by the governor for four-year terms.

(e) Attached Boards. Attached to the department for administrative purposes is the Board of Oil and Gas Conservation. The board consists of five members appointed by the governor and adopts administrative rules separately from the department of natural resources and conservation.

(f) Advisory Councils. There are two advisory councils advising the department -- the State Conservation Commission and the Water Law Advisory Council. These councils have no rulemaking or adjudicating authority.

(2) Functions of Department Divisions.

(a) Centralized Services Division. The Centralized Services Division performs the general fiscal administrative support functions for the department. Its activities include purchasing, information and education, cartography, accounting, budgeting, payroll, personnel, statistics, reports, and records management. This division has no rule making or adjudicating functions under the Administrative Procedure Act.

(b) Water Resources Division. The Water Resources Division has the responsibility for the administration of

water resources programs of the department. Included in its functions are ground-water administration, field project supervision, preparation of the state water resource plan, river basin studies, hydrology, flood plain management, and weather modification administration.

(c) Forestry Division. The Forestry Division administers the forestry programs of the state government. Its activities include timber sales administration, reforestation, timber stand improvement, hazard reduction, portable sawmill licensing, farm service forestry, fire protection on state and private forests, and administration of cooperative projects. As required by the Montana Constitution, the division reports to the State Board of Land Commissioners on matters relating to state lands.

(d) Conservation Districts Division. The Conservation Districts Division supervises and coordinates the formation and operation of local grazing and soil and water conservation districts in the state. The division also develops and implements the state rangeland utilization plan, and processes applications for watershed projects.

(e) Oil and Gas Conservation Division (Attached for administrative purposes only.) The Oil and Gas Conservation Division administers the oil and gas laws of the state. Its activities include classification of wells, well inspections and investigations, issuance of drilling permits, engineering studies, establishment of well spacing units and pooling orders, and core depository.

(3) Boards.

(a) Board of Oil and Gas Conservation. The Board of Oil and Gas Conservation is attached to the department for administrative purposes only. As such, the board is responsible for adopting rules and holding hearings under the oil and gas laws of the state, independently of the department.

(b) Board of Natural Resources and Conservation. Except for actions of the Board of Oil and Gas Conservation, the board must concur in actions of the department which grant or deny rights to the public. Consequently, the board must concur in rules adopted by the department, and in determinations or orders resulting from hearings held by the department. (For a more detailed explanation of the board's functions, inquiries may be directed to the director, who will inform the inquiring party as to where the guidelines can be found in the Montana Administrative Rules.)

(4) Information or Submissions. General inquiries regarding the department may be addressed to the director. Specific inquiries regarding the functions of each division may be addressed to the administrator of that division. All

requests for hearings, declaratory rulings, and for participation in rule making may be addressed to the director unless the notice in the Montana Administrative Register makes specific provisions for submissions.

(5) Personnel Roster. Addresses of the director and each division are as follows:

Director, Department of Natural Resources and Conservation, Room 425, Mitchell Building, Helena, Montana 59601

Centralized Services Division, Room 432, Mitchell Building, Helena, Montana 59601

Water Resources Division, Room 403, Mitchell Building, Helena, Montana 59601

Forestry Division, 2705 Spurgeon Road, Missoula, Montana 59801

Conservation Districts Division, Room 422, Mitchell Building, Helena, Montana 59601

Oil and Gas Conservation Division, 325 Fuller Avenue, Helena, Montana 59601

(6) Charts of Agency Organization. Descriptive charts of the Department of Natural Resources and Conservation are attached as the following four pages and are incorporated in this rule. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. 1204, Eff. 10/12/79.)

Sample form 3: Petition from interested person.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	PETITION TO (3-
(2-promulgation of a rule,	)	PROMULGATE A RULE,
amendment of rule ___, or	)	AMEND RULE ___, OR
repeal of rule ___.)	)	REPEAL RULE ____)

TO: All Interested Persons.

1. Petitioner's name and address is (4-).
2. (5-facts showing petitioner will be affected; for ex.: Petitioner is the owner of Sunset Rooming House, a three-story wood frame structure located at 111-11th street, Anytown, Montana. Under rule 1.6.604 page 1-4/, Administrative Rules of Montana, petitioner is required to install a sprinkling system in his rooming house. The cost of a sprinkling system to petitioner would be (\$5,000).

3. (6-reasons for the proposed agency action; for ex.: Petitioner's asserts a sprinkling system is not necessary in petitioner's case because the second and third floors of petitioner's rooming house each contain two fire exits leading to a fire escape. Petitioner contends that a heat sensing fire alarm system would be an adequate alternative to protect the public safety in petitioner's rooming house).

4. The rule as proposed to be (7-amended, promulgated) would read as follows:

(8-for ex.: Rule \_\_\_\_\_. Sprinkler Systems -- When Required.

(1) Except as otherwise provided in this rule, all wood frame structures of two or more stories used for public occupancy shall be equipped with a fire sprinkler system approved as to type and installation by the Fire Marshal Bureau.

(2) Where a wood frame structure which is required by subsection (1) of this rule to have a sprinkler system has two or more exit doors on each floor above the ground floor leading to an approved type of fire escape maintained for public use, a heat sensing fire alarm system approved by the Fire Marshal Bureau as to type and installation, may be substituted for a sprinkler system.

5. (9-Option 1: Petitioner has no knowledge of any person who may have a particular interest in the proposed agency action; or

Option 2: Persons known to petitioner to have an interest in the proposed agency action are: \_\_\_\_\_).

WHEREFORE, petitioner requests the (10-name of agency) to (11-type of proposed agency action).

(12-Signature)

\_\_\_\_\_  
Petitioner

Sample form 4: Notice of public hearing on the proposed adoption of a new rule. Section 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC
of rule (2-summary of proposed	)	HEARING
rule).	)	

1. On (3-date) at (4-time) a public hearing will be held in room (5-) of the (6-building) at (7-city), Montana, to consider the adoption of rule (8-).

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. (Option 1:) The proposed rule provides as follows: (9-text of proposed rule).

(Option 2:) The proposed rule provides in summary that (9-summary). A copy of the entire proposed rule may be obtained by contacting \_\_\_\_\_.

(Option 3:) The proposed rule provides in substance that: (9-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Options 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the summaries and paraphrasing must accurately reflect the substance of the proposed rule.)

4. (10-rationale for proposed rule; for ex.: The department is proposing this rule because investigations by the state Fire Marshal have indicated that at least six fatalities in 3 separate hotel or nursing home fires in recent years would probably have been prevented if sprinkler systems had been in the buildings).

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to (11-name, address), no later than (12-date at least 28 days from the day of notice. 2-4-302(4)).

6. (13-name, address) has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section (14-), MCA, and the rule implements section(s) (15-), MCA.

name of department head or chairman of governing board must be signed by:

By: (16-Authorized person's signature)

Certified to the Secretary of State (17-date)

Sample form 5: Notice of public hearing on proposed amendment of a rule. Section 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC
of Rule (2-) (3-summary; for ex.:	)	HEARING ON PRO-
requiring sprinkler systems in	)	POSED AMENDMENT
wood frame structures of two	)	OF RULE (4-)
or more stories used for public	)	(5-subject; for
occupancy).	)	ex.: Sprinkler
	)	Systems).

TO: All Interested Persons.

1. On (6-date) at (7-time) a public hearing will be held in room (8-) of the (9-building), at (10-city), Montana, to consider the amendment of rule (11-).

2. The proposed amendment replaces present rule (12-) found in the Administrative Rules of Montana. The proposed amendment would (13-summary; for ex.: permit the use of heat sensing alarm devices as an alternative to a exit and fire escape requirements).

3. (Option 1:) The rule as proposed to be amended provides as follows:

(14-text of present rule with matter to be stricken interlined and new matter added, then underlined).

(Option 2:) The rule as proposed to be amended provides in summary that (14-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting

---

(Option 3:) The rule as proposed to be amended provides in substance that (14-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Options 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the summaries or paraphrasing must accurately reflect the substance of the proposed rule.)

4. (15-rationale for proposed amendment; for ex.: The department is proposing this amendment to its rule because compliance with the present rule would be very expensive for the owners of several older buildings, and because these owners have presented credible evidence that the less expensive heat sensing alarm systems would provide an equal measure of public safety).

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to



(16-name, address), no later than (17-date at least 28 days from the day of notice. 2-4-302(4)).

6. (18-name, address) has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section (19-), MCA, and the rule implements section(s) (20-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (20-Authorized person's signature)

Certified to the Secretary of State (21-date).

Sample form 6: Notice of public hearing on proposed repeal of a rule. Section 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the repeal of	)	NOTICE OF PUBLIC
Rule (2-) (3-summary; for ex.:	)	HEARING ON REPEAL
requiring sprinkler systems in	)	OF RULE (4-)
wood frame structures of two or	)	(5-Subject; for ex.:
more stories used for public	)	Sprinkler Systems)
occupancy).		

TO: All Interested Persons.

1. On (6-date), at (7-time), a public hearing will be held in room (8-) of the (9-building), (10-city), Montana to consider the repeal of rule (11-), (12-summary, for ex.: requiring sprinkler systems in wood frame structures of two or more stories used for public occupancy).

2. The rule proposed to be repealed can be found on page (13-) of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because (14-rationale; for ex.: the Department of Health and Environmental Sciences has rules of similar import for hotels, boarding facilities, restaurants, nursing homes and health care facilities, and it appears that almost all wood frame structures of two or more floors used for public occupancy fall into one of those categories. Rule 1.6.604 consistent

with the health agency's rule and confusing to the public if it is not consistent).

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to (15-name, address), no later than (16-date at least 28 days from the day of notice. 2-4-302(4)).

5. (17-name, address) has been designated to preside over and conduct the hearing.

6. The authority of the agency to repeal the rule is based on section (18-), MCA, and the rule implements section or sections (19-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (20- Authorized person's signature)

Certified to the Secretary of State (21-date).

Sample form 7: Notice of proposed adoption of a substantive rule. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
ADOPTION OF A RULE (2-	)	ADOPTION OF A RULE
summary; for ex.: speci-	)	(3-subject; for ex.:
fying the forms available)	)	Water Use Act Forms)
for use under the Montana)	)	
Water Use Act)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (4-date), the (5-agency) proposes to adopt a rule (6-summary; for ex.: specifying the forms available for use under the Montana Water Use Act).

2. (Option 1:) The proposed rule provides as follows:

(7-text of proposed rule).

(Option 2:) The proposed rule provides in summary that: (7-summary). A copy of the entire proposed rule may be obtained by contacting\_\_\_\_\_.

(Option 3:) The proposed rule provides in substance that: (7-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Options 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (8-rationale for proposed rule; for ex.: The rule is proposed to respond to a petition for its adoption filed by the Montana Water Users Association. The petition sets forth reasons why the forms should be available to the public. Copies of the petition are available from the department).

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to (9-name, address), no later than (10-date at least 28 days from the day of notice. 2-4-302(4)).

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to (11-name, address), no later than (12-date at least 28 days from day of notice. 2-4-302(4)).

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (13-) persons based on (14-for ex.: the 200 licensed plumbers in Montana).

7. The authority of the department to make the proposed rule is based on section (15-), MCA, and the rule implements section(s) (16-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (17- Authorized person's signature)

Certified to the Secretary of State (18-date).

Sample form 8: Notice of proposed adoption of a procedural rule when no public hearing is contemplated. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
adoption of Rule (2-)	)	ADOPTION OF RULE (4-)
(3-summary)	)	(5-subject) NO PUBLIC
	)	HEARING CONTEMPLATED

TO: All Interested Persons.

1. On (6-date), the (7-agency) proposes to amend rule (8-) which (9-summary).

2. (Option 1:) The rule as proposed to be amended provides as follows:

(10-text of rule with matter to be omitted interlined and new matter added, then underlined.)

(Option 2:) The rule as proposed to be amended provides in summary that (10-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting

(Option 3:) The rule as proposed to be amended provides in substance that : (10-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Option 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (11-rationale for the proposed amendment)

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to (12-name, address), no later than (13-date at least 28 days from the day of notice. 2-4-302(4)).

5. The authority of the agency to make the proposed amendment is based on section (14-), MCA, and the rule implements section(s) (15-), MCA.

name of department head or  
chairman of the governing board  
must be signed by:

By: (16-Authorized person's signature)

Certified to the Secretary of State (17-).

Sample form 9: Notice of proposed amendment of a substantive rule. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule (2-)	)	AMENDMENT OF RULE (4-)
(3-summary)	)	(5-subject)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (6-date), the (7-agency) proposes to amend rule (8-) which (9-summary).

2. (Option 1:) The rule as proposed to be amended provides as follows:

(10-text of rule with matter to be omitted interlined and new matter added, then underlined.)

(Option 2:) The rule as proposed to be amended provides in summary that (10-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting

(Option 3:) The rule as proposed to be amended provides in substance that : (10-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Option 2 and 3 are to be used when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (11-rationale for the proposed amendment)

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to (12-name, address), no later than (13-date at least 28 days from the day of notice. 2-4-302(4)).

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to (14-name, address), no later than (15-date at least 28 days from day of notice. 2-4-302(4)).

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (16-) persons based on (17-for ex.: the 200 licensed plumbers in Montana).

7. The authority of the agency to make the proposed amendment is based on section (18-), MCA, and the rule implements section(s) (19-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (20-Authorized person's signature)

Certified to the Secretary of State (21-date).

Sample form 10: Notice of proposed amendment of a procedural rule when no public hearing is contemplated. Use form 9 omitting paragraphs 5 and 6.

Sample form 11: Notice of proposed repeal of a substantive rule. Sections 2-4-201, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED
of rule (2-) (3-summary;	)	REPEAL OF A RULE
for ex.: specifying the forms	)	(4-subject; for ex.: \
available for use under the	)	Water Use Act Forms)
Montana Water Use Act)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (5-date), the (6-agency) proposes to repeal rule (7-), (8-summary; for ex.: specifying the forms available for use under the Montana Water Use Act).

2. The rule proposed to be repealed is on page (9-) of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because (10-rationale; for ex.: the forms are no longer needed because of amendments to the act).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to (11-name, address), no later than (12-date at least 28 days from day of notice. 2-4-302(4)).

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to (13-name, address), no later than (14-date at least 28 days from day of notice. 2-4-302 (4)).

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental subdivision of agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be (15-) persons based on (16-for ex.: the 200 licensed plumbers in Montana).

7. The authority of the department to make the proposed rule is based on section (17-), MCA, and the rule implements section (18-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (19-Authorized person's signature

Certified to the Secretary of State (20-date).

Sample form 12: Notice of proposed repeal of a procedural rule when no public hearing is contemplated. Use Form 11 omitting paragraphs 5 & 6. Sections 2-4-201, 2-4-302.

Sample form 13: Repeal or change of a rule by direction of the legislature. Sections 2-4-412, 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED
or change of Rule (2-)(3-	)	REPEAL OR CHANGE OF
summary, for ex.: requiring	)	RULE (4-)(5-subject,
sprinkler systems in wood	)	for ex.: Sprinkler
frame structures of two or	)	Systems)
more stories used for public	)	
occupancy).	)	

TO: All Interested Persons.

1. On (6-date), the (7-agency) will (repeal or change) rule (8-), (9-summary, for ex.: requiring sprinkler systems in wood frame structures of two or more floors used for public occupancy).

2. The rule to be (repealed or changed) is on page (10) of the Administrative Rules of Montana.

3. (11-rationale for the repeal or change; for ex.: the department is repealing this rule as directed by Senate Joint Resolution No. 10 of the 45th Legislature, the text of which sets forth the reasons for repealing the rule).

4. (12-in the case of a change, citation to the authority for the rule and the code section or sections being implemented, if different from the joint resolution).

name of department head or chairman of the governing board must be signed by:

By: (13-Authorized person's signature)

Certified to the Secretary of State (14-date).



Sample form 14: Amendment of notice of proposed adoption, amendment or repeal of a substantive rule. Section 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2-same ) NOTICE OF PUBLIC HEARING  
as original notice). ) FOR (3-adoption of a  
 ) rule, amendment of rule  
 ) \_\_\_\_\_, or repeal of rule  
 ) \_\_\_\_\_) (4-subject, same  
 ) as original notice).

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on (5-date), is amended as follows because (6-the Administrative Code Committee, or the required number of persons designated therein) (7-has/have) requested a public hearing:

1. On (8-date), at (9-time), a public hearing will be held in room (10-) of the (11-building) to consider the repeal of rule \_\_\_\_\_, (13-summary; for ex.: requiring sprinkler systems in wood structures of two or more stories used for public occupancy).

2. (14-the proposed rule or proposed amendment) provides as follows:

(15-same as original notice)

OR

(14-the rule proposed for repeal is found on page \_\_\_\_ of the Administrative Rules of Montana).

3. The rule is proposed for the purpose of (16-same rationale as original notice).

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to (17-name, address), no later than (18-date at least 28 days from day of notice. 2-4-302(4)).

5. (19-name, address) has been designated to preside over and conduct the hearing.

6. The authority of the department to (20-make the proposed rule, amendment, or repeal) is based on section (21-), MCA, and the rule implements section(s) (22-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (22-Authorized person's signature)

Certified to the Secretary of State (23-date).

Sample form 15: Notice of adoption, amendment or repeal of a rule. Section 2-4-302.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2-	)	NOTICE OF THE (3-
same as notice of pro-	)	ADOPTION OF A RULE,
posed action)	)	AMENDMENT OF RULE____,
	)	OR REPEAL OF RULE____)

TO: All Interested Persons.

1. On (4-date), the (5-agency) published notice of a proposed (6-adoption of a rule, amendment to rule\_\_\_\_, or repeal of rule\_\_\_\_) concerning (7-subject; for ex.: salons in residences) at page (8-) of the (9-year) Montana Administrative Register, issue number (10-).

2. (Option 1:) The agency has (11-adopted, amended or repealed) the rule as proposed.

(Option 2:) The agency has (11-adopted, amended) the rule with the following changes:

(text of rule with matter stricken interlined and new matter added, then underlined). If the changes are not numerous the following form may be used:

1.1.999 Payment Procedures.

(1) Reimbursement principles.

(a)-(b) same as proposed rule.

(c) the provider shall submit to the department or its designee financial data within ~~120~~ days 90 days.

(d)-(e) same as proposed rule.

(Option 3:) The agency has (11-adopted, amended) the rule with minor editorial changes but substantially as proposed.

(Option 4:) The agency has repealed rule (11-), found on page \_\_\_\_\_ of the Administrative Rules of Montana.

3. (Option 1:) No comments or testimony were received.

(Option 2:) (12-when adverse comment or testimony has been received, the agency must acknowledge and accept or rebutt the reasons given; for ex.:

At the public hearing, a representative of the Montana Wood Contractors' Association opposed the rule on the grounds that it discriminated against wooden buildings arbitrarily. He argued that fire hazards are also significant in brick and stone buildings, and that the rule would divert new construction business to brick and stone contractors.

A written statement opposing the rule was received from John Doe of Anytown, Montana, who had just installed a heat sensing fire alarm system in this three-story rooming house. He argued that such a system provided a margin of safety equal to that of a sprinkler system.

The argument of the Wood Contractors is overruled. Statistics from the U.S. Fire Insurers' Association 1974 Annual Report show that fires break out in wood frame buildings at an annual rate of 21.4 per thousand, and in all other types of buildings at a rate of 11.9 per thousand. This differential justifies a stricter rule for wooden buildings.

The argument of Doe has merit on the assumption that adequate exits from upper floors are available. Accordingly, the rule has been modified to allow the substitution of a heat sensing alarm system approved by the Fire Marshal for sprinkler systems in buildings having two or more exit doors leading to satisfactory fire escapes on each upper floor).

name of department head or chairman of the governing board must be signed by:

By: (16-Authorized person's signature)

Certified to the Secretary of State (17-date).

Sample form 16: Abbreviated Notice for emergency rule making. Section 2-4-303.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
adoption of an emergency rule )	(on abbreviated notice)
(2-summary; for ex.: on horse )	on (3-subject; for ex.:
racing records) )	the adoption of a rule
)	on horse racing records)

TO: All Interested Persons.

(1) Statement of reasons for emergency (3-date):

(a) (4-explanation of emergency, for ex.: The board has recently had cause to believe that a number of out-of-state horses will be brought to Montana to race in the forthcoming spring season meets, and that the out-of-state track records of some of these horses may not be fully disclosed. No rule of the board now requires such disclosure. The practice of running so-called "ringers" imperils public safety and welfare in that public dissatisfaction with race results and posted odds could lead to altercations and commotion in betting areas and stands. Such welfare and safety considerations are in imminent peril in that 14 meets are scheduled between this date and the publication of the July Administrative Register, the soonest that a remedial rule could be adopted under regular procedures.

Therefore, the Board intends to adopt the following emergency rule in public hearing on May 28, 1978 (three days after publication of this issue of the Register). Comments received on or before that date will be considered prior to adopting the rule, and the Board reserves the right to revise the rule. The rule as adopted will be mailed to all licensed meets and commenting parties and published as an emergency rule in the next issue of the Register).

(2) The hearing will take place in (5-place) (6-time and date).

(3) The text of the proposed rule is as follows: (7-text).

(4) The rationale for the proposed rule is as set forth in the statement of reasons for emergency.

(5) Interested persons may comment in writing to: (8-name and address).

(6) (9-name) has been appointed hearing officer to preside over and conduct the hearing.

(7) The authority of the board to adopt the proposed rule is (10-citation to authority), and the rule implements section(s) (11-), MCA.

(11-name of department)

name of department head or chairman of the governing board must be signed by:

By: (12-Authorized person's signature)

Certified to the Secretary of State (13-date).

Sample form 17: Notice of hearing.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2- )	NOTICE OF HEARING ON
summary; for ex.: the )	(3-subject; for ex.:
Insurance Agent's License)	THE REVOCATION OF
of John Doe) )	AGENT'S LICENSE

TO: (4-name of party):

At (5-time), (6-date), at (7-address), a hearing will be held for the (8-subject; for ex.: revocation of the insurance agent's license of John Doe).

This hearing is held under the authority of (9-MCA section or agency regulation). Violation of (10-MCA section or agency regulation) is alleged in that (11-statement of facts constituting alleged violation; for ex.:

(Option 1:) John Doe misappropriated to his own use money belonging to a policyholder, specifically the sum of \$500 from Mary Smith on or about the 1st day of March 1973.

(Option 2:) John Doe misappropriated to his own use money belonging to a policyholder. A more definite and detailed statement of the allegation may be obtained by applying to Ms. Smith, Capitol Building, Helena, Montana.)

You are entitled to attend this hearing and respond and present evidence and arguments on all issues involved in this action.

You have a right to be represented by counsel at the hearing. If you desire to contest the proposed agency action, or to waive formal proceedings pursuant to 2-4-603, you must notify (12-name, address) in writing within (13-number of days which provides reasonable opportunity to prepare) of service of this notice on you. Failure to notify (14-name) will result in (15-proposed agency action; for ex.: revocation) on the date of this hearing.

Dated: (16-)

name of department head or chairman of the governing board must be signed by

By: (17-Authorized person's signature)

Sample form 18 Notice of immediate suspension or revocation of a license.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2-	)	NOTICE OF (3-action
type of license and name )		taken; for ex.:
of holder, for ex.: the )		SUSPENSION OF AGENT'S
Insurance Agent's License)		LICENSE) AND OF HEARING
of John Doe)	)	FOR (4-PERMANENT SUSPEN-
	)	SION OR REVOCATION) OF
	)	(5-TYPE OF LICENSE)

TO: (6-name of license holder):

At (7-time), (8-date), at (9-room, building, address), a hearing will be held for the (10-revocation or permanent suspension) of the (11-type of license) of (12-name of license holder).

This hearing is held under the authority of section (13-), MCA. Violation of (14-MCA section or agency regulation) is alleged.

Pending the hearing, the (15-type of license) of (16-name of license holder) is (17-suspended or revoked) as of the date of this notice. This (18-suspension or revocation)

is based on (19-option 1: for ex.: misappropriation to his own use of money belonging to a policyholder, specifically \$500 from Mary Smith, on or about the 1st day of March 1973).

(Option 2: for ex.: misappropriation to his own use of money belonging to a policyholder. A more definite and detailed statement of the allegation may be obtained by applying to Ms. Smith, Capitol Building, Helena, Montana).

The (20-agency) finds that the public welfare imperatively requires emergency action, in that (21-finding of fact, for ex.: John Doe has notified the Commissioner that he intends to continue the practice of retaining for his own use initial payments received by him from his clients).

You are entitled to attend the hearing and present evidence and arguments on whether the (22-suspension or revocation) should be made permanent. You have a right to be represented by counsel at the hearing. If you desire to contest permanent (23-suspension or revocation), or if you desire to waive formal proceedings under 2-4-603, you must notify (24-name, address) in writing within (25-a number of days which provides a reasonable opportunity to prepare) of service of this notice on you. Failure to notify (26-name) of your contest of this action will result in permanent (27-suspension or revocation) on the date of this hearing. Dated (28-).

name of department head or chairman of the governing board must be signed by:

By: (29-Authorized persons's signature)

Sample form 19: Default Order

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2- )  
summary, for ex.: )      DEFAULT ORDER  
Insurance Agent's License)  
of John Doe)      )

On (3-date), a Notice of Proposed (4-agency action, for ex.: Revocation of Agent's License) was served on (5-name, address), by the sheriff of (6-county) Montana. A copy of

the sheriff's return is attached to this order and marked Exhibit "A". A copy of the notice is attached to this order and marked Exhibit "B".

The notice provided an opportunity for hearing if requested within (7-) days. More than (7-) days have elapsed since service of the order and no request for hearing has been received. The (8-agency official) considered the evidence and exhibits and makes the following determinations:

FINDING OF FACT

(9-for ex.: On the first day of March, 1973, John Doe appropriated to his own use money belonging to a policyholder, specifically \$500 from Mary Smith, as is indicated by sworn statements by two witnesses, Mary Jones and Robert Jones, both being competent to testify and having personal knowledge of the transaction under consideration.

CONCLUSIONS OF LAW

(10-for ex.: Section 33-17-1001(1), MCA, provides that the commissioner may revoke an insurance agent's license if he finds that the licensee has misappropriated or converted to his own use money belonging to policyholders. The commissioner has so found; thus cause exists under section 33-17-1001(1)(d), MCA, for the revocation of the insurance agent's license of John Doe).

ORDER

(11-for ex.: The insurance agent's license of John Doe is revoked effective August 1, 1973).

name of department head or chairman of the governing board must be signed by:

By: (12-Authorized person's signature)

DATED: (13-).

Sample form 20: Order appointing a hearing examiner.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of the	)	APPOINTMENT OF HEARING
(2-same as original	)	EXAMINER
notice)	)	

TO: All Interested Persons.



On (3-date) a notice of hearing for (4-for ex.: revocation of insurance agent's license) was served on (5-name). On (6-date) the agency received written notice that (7-name) will appear at the hearing to contest the intended agency action. (8-name) is appointed the hearing examiner in the above action. All correspondence and motions in the above matter should be directed to the hearing examiner at (9-address).

Dated: (10-)

name of department head or chairman of the governing board must be signed by:

By: (11-Authorized persons's signature)

Sample form 21: Final Order.

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF MONTANA

In the matter of the	)	FINDINGS OF FACT,
Insurance Agent's License)	)	CONCLUSION OF LAW, ORDER
of John Doe	)	AND NOTICE OF OPPORTUNITY
	)	FOR JUDICIAL REVIEW

After notice and hearing on the proposed revocation of the Insurance Agent's License of John Doe, for appropriation of policyholder's money, the Insurance Commissioner considered the evidence and exhibits and makes the following disposition of this contested case.

PROPOSED FINDINGS OF FACT

Counsel for John Doe proposed that the Commissioner find that: The personal check of Mary Smith was deposited to a trust account maintained by agent Doe. The Commissioner does not accept this proposed finding of fact because it was contradicted by two witnesses, both maintaining that the bank account was used for personal purposes by John Doe.

FINDINGS OF FACT

The licensee, John Doe, received the personal check of Mary Smith in the amount of \$500 on the 1st day of March 1973. The licensee, John Doe, maintained two checking

accounts, one designated John Doe Insurance, Trust Account, the other a joint checking account between John Doe and Jane Doe. The joint checking account had a mailing address which was 100 Main Street, Anytown, Montana. 100 Main Street is the residence of John and Jane Doe. Thereafter, over a period of two weeks John and Jane Doe drew checks for rent, cash and groceries against the \$500 deposited. On March 1, 1973, John Doe gave to Mary Smith a receipt which read: "Received of Mary Smith the sum of \$500 in payment of initial premium of life insurance policy to be issued by the Sandy Bottom Life Insurance Company of North Dakota in the amount of \$150,000, insuring the life of Mary Smith.

/s/ John Doe, Agent  
Sandy Bottom Life Insurance  
Company of North Dakota"

The Commissioner finds that John Doe appropriated to his own use money belonging to a policyholder.

CONCLUSIONS OF LAW

Section 33-17-1001(1)(2), MCA, provides that the commissioner may revoke an insurance agent's license if he finds that the licensee has misappropriated or converted to his own use money belonging to policyholders. The commissioner has so found; thus cause exists under section 33-17-1001(1)(d), MCA, for the revocation of the insurance agent's license of John Doe.

ORDER

The insurance agent's license of John Doe is revoked effective August 1, 1973.

Dated: August 1, 1973.

/s/ John Smyth  
Insurance Commissioner

NOTICE: You are entitled to judicial review of this Order in accordance with section 2-4-702, MCA. Judicial review may be obtained by filing a petition in district court within thirty days after the service of this Order.

Sample form 22: Petition for Declaratory Ruling.

BEFORE THE (1-name of agency)  
OF THE STATE OF MONTANA

In the matter of (2-summary; )  
for ex.: the application )  
of John Doe, an insurance ) PETITION FOR  
agent, for a declaratory ) DECLARATORY  
ruling on the applicability ) RULING  
of section 33-17-1001(1)(d), )  
MCA, to his trust account) )

1. Petitioner's name and address is (3-).

2. (4-facts; for ex.: Petitioner maintains an insurance office in his residence in Anytown, Montana. As part of his business petitioner maintains a trust account and a join checking account under one number. Petitioner regularly deposits checks received from clients into the checking account for future transmittal to petitioner's employer, Sandy Bottom Insurance Company of North Dakota. The insurance commissioner has threatened to bring proceedings under section 33-17-1001(1)(d), MCA, for revocation of petitioner's license.)

3. The (5-statute, regulation, order) as to which petitioner requests a declaratory ruling is (6-) which provides that (7-pertinent provisions).

4. The question presented for declaratory ruling by the agency is (8-for ex.: whether the above statute makes the agent's license subject to revocation for maintaining a combination trust account and private account).

5. Petitioner contends that (9-for ex.: his activity is not an illegal withholding, because he does not use any of the deposited money in trust for his own use).

6. Petitioner requests a declaratory rule that (10-for ex.: he may maintain one checking account for both trust and private moneys without violation of section 33-17-1001(1)(d), MCA).

7. (11-option 1:) Petitioner knows of no other party similarly affected.

(Option 2:) Petitioner knows of the following parties who are similarly affected: \_\_\_\_\_.

Dated: (12-).

\_\_\_\_\_  
(13-name)

BEFORE THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
an emergency rule pertaining to	)	AN EMERGENCY RULE PER-
the Aid to Families with Dependent	)	TAINING TO AID TO
Children	)	FAMILIES WITH DEPENDENT
	)	CHILDREN

To: All Interested Persons

1. Statement of reasons for emergency:

(a) On September 21, 1981, the United States Department of Health and Human Services published in Volume 46 of the Federal Register at page 46750 (Monday, September 21, 1981) interim regulations implementing changes in the Aid to Families with Dependent Children (AFDC) program as a result of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). The federal regulations and law are effective October 1, 1981. State law mandates that the department administer all state and federal funds allocated to the department for public assistance in conformity with federal and state law. The department is prohibited from spending AFDC funds unless it is in compliance with federal law. See sections 53-2-201, 53-2-206, 53-2-306, 53-4-211, 53-4-212 and 53-4-215, MCA. Therefore, the department finds that there is imminent peril to public health, safety and welfare which requires the department to adopt the following rule immediately, without prior notice.

2. The text of the emergency rule is as follows:

RULE 1 ELIGIBILITY AND OTHER REQUIREMENTS FOR AFDC

(1) The department hereby adopts and incorporates by reference the changes in 45 CFR 204, 206, 233, 234, 235, 238, and 239 as published in 46 Federal Register 46750, which set forth as follows: The key changes fall within four basic areas, as follows: 1) enable families to move from welfare dependency to job-based self-sufficiency; 2) target assistance to the neediest by setting a total income limit of 150 percent of the state's need standard and standardizing and changing the sequence of the earned income disregards by allowing a standard \$75 disregard or lesser amount if employment not full time, actual child care costs up to state maximums, then \$30, then 1/3 of the remainder. The \$30 and 1/3 disregards will be applied only to the first 4 consecutive months in which they occur; 3) in calculating need, count existing sources of income which are available to families but which were previously excluded by counting the income of a stepparent, after appropriate disregards, to determine the need of step-child(ren) with whom he or she is living; assuming on an ongoing basis receipt of the advance earned income credit (EIC) for those eligible to receive it; counting income in

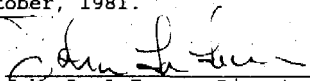
excess of the state's need standard as available to meet future needs; and treating resources, excluding the home and a reasonably valued car, as available to meet needs, thereby making the family ineligible; 4) Improve program administration through requiring retrospective accounting and monthly recipient reporting; recovery of overpayments and payment of underpayments to current recipients; and elimination of grant payments for amounts less than \$10. A copy of 45 CFR 205, 206, 233, 234, 235, 238 and 239 (46 Fed. Reg. 46750) may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, P. O. Box 4210, 111 Sanders, Helena, Montana 59604.

(2) This rule takes precedence over any other rules or sections of rules in this title which are in conflict, including but not limited to ARM Title 46, chapter 10.

3. The rationale for the emergency rule is as set forth in the statement of reasons for emergency.

4. The authority of the Department to adopt this rule is sections 53-4-212 and 53-2-201 MCA and the rule implements sections 53-4-211 and 53-4-215 MCA.

Dated this 1st day of October, 1981.

  
\_\_\_\_\_  
John D. LaFaver, Director  
Department of Social and Rehabilitation Services

Certified to the Secretary of State October 1, 1981.

BEFORE THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES OF THE  
STATE OF MONTANA

In the matter of the emergency	)	NOTICE OF EMERGENCY
amendment of ARM 46.11.101 food	)	AMENDMENT OF FOOD STAMP
stamp program, incorporation by	)	PROGRAM RULE 46.11.101,
reference of later amendment of	)	NOTICE OF INCORPORATION
federal regulation	)	BY REFERENCE

To: All Interested Persons

1. Statement of reasons for emergency:

(a) On September 4, 1981, the United States Department of Agriculture adopted interim regulations (46 Fed. Reg. 44712, Friday, September 4, 1981) implementing changes in the current Food Stamp Program in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. Law 97-35). The Department has to implement these changes by October 1, 1981. State law mandates that the Department administer federal funds in conformity with federal law. The Department as an agent of the federal government cannot administer the federal Food Stamp Program unless it is in compliance with federal law. See sections 53-2-201, 53-2-206, and 53-2-306 MCA. Ch. 591 L. 1981 amended section 2-4-307, MCA which allows the Department to adopt later amendments of federal regulations to comply with federal law by filing a notice of incorporation by reference. This law became effective October 1, 1981. Therefore, the Department finds that there is imminent peril to public health, safety and welfare which requires the Department to amend the following rule immediately without prior notice.

2. The text of the emergency amended rule is as follows:

46.11.101 FOOD STAMP PROGRAM (1) The department of social and rehabilitation services adopts and incorporates by reference the food stamp program rules as adopted by the food and nutrition services, United States department of agriculture and as set forth in 7 CFR 271 through 276, as amended. A copy of the entire food stamp program rules may be obtained by contacting the Department of Social and Rehabilitation Services, Box 4210, Helena, MT 59604.

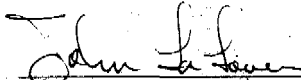
(2) The department hereby adopts and incorporates by reference 7 CFR parts 271, 272, 273, 274, and 277 published in 46 Fed. Reg. 44712, Friday, September 4, 1981 which sets forth changes made in the definition of a household, which households are eligible for food stamps, what benefits a household will receive when it first applies and in subsequent months, when USDA will update the income eligibility standards, benefit levels and allowable deduction amounts to account for changes in the cost-of-living, and other parts of the program. Taken together, these changes will restrict

eligibility and reduce the program's cost. This rule also implements a minor provision of the 1980 food stamp amendments. A copy of 7 CFR parts 271, 272, 273, 274 and 277 published in 46 Fed. Reg. 44712, Friday, September 4, 1981 may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604. The effective date of this incorporation is October 1, 1981.

3. The rationale for the proposed rule is as set forth in the statement of reasons for emergency.

4. The authority of the Department to amend the rule is section 53-2-201, MCA and implements 53-2-306, MCA.

Dated this 1st day of October, 1981.



John D. LaFaver, Director  
Department of Social and Rehabilitation Services

Certified to the Secretary of State October 1, 1981.

VOLUME NO. 39

OPINION NO. 33

EMERGENCIES - Funding for National Guard when called to active duty in emergencies;  
NATIONAL GUARD - Funding when called to active duty in emergency;  
MONTANA CODE ANNOTATED - Section 10-1-501, 10-3-311, 10-3-312;  
1972 MONTANA CONSTITUTION - Article VI, section 13.

HELD: Expenses incurred in the mobilization of the Montana National Guard are funded through section 10-3-312, MCA, when the Guard is mobilized pursuant to a declaration of emergency under section 10-3-311, MCA.

1 October 1981

David M. Lewis, Director  
Budget and Program Planning  
Office of the Governor  
Capitol Building  
Helena, Montana 59620

Dear Mr. Lewis:

You have inquired whether the \$750,000 limitation on expenditure of general fund money for emergency and disaster relief codified in section 10-3-312, MCA, applies to funds expended under section 10-1-501, MCA, for the support of the Montana National Guard when called to active duty in an emergency. The 1981 Legislature appropriated \$750,000 for disaster relief under section 10-3-312, MCA, but made no explicit appropriation for expenses incurred by the National Guard when called into active duty. Since no money may be paid out of the general fund unless appropriated by the Legislature, Article VII, § 14, 1972 Mont. Const., the substance of your question is whether there are currently appropriated funds to support the National Guard in the event of an emergency mobilization.

The budgetary limitation in section 10-3-312, MCA, was enacted as section 2 of Chapter 409, Laws of 1971. Section 1 of that bill authorized the governor to declare an emergency and expend state funds when an emergency exists which cannot be dealt with through the resources of local governments. One resource available to aid in coping with an emergency is the Montana National Guard. In my opinion,



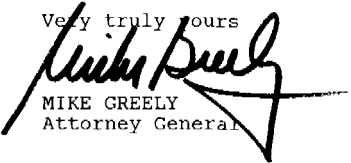
when the Guard is mobilized pursuant to a declaration of emergency under section 10-3-311, MCA, the payment of Guard expenses is governed by section 10-3-312, MCA.

There may be situations, however, in which the Guard is mobilized without a declaration of emergency under section 10-3-311, MCA. That section deals exclusively with emergencies which place a burden on local government services, such as floods, earthquakes, epidemics, and riots. Other emergencies may arise which are unrelated to local government services, such as disruptions in state services caused by strikes of state employees, which may justify the governor in mobilizing the Guard under Article VI, § 13, 1972 Mont. Const. The strike against the Department of Institutions in 1979 is a good example. In such a situation, a declaration of emergency under section 10-3-311, MCA, might well be inappropriate, and the budgetary limitation of section 10-3-312, MCA, would not apply.

THEREFORE, IT IS MY OPINION:

Expenses incurred in the mobilization of the Montana National Guard are funded through section 10-3-312, MCA, when the Guard is mobilized pursuant to a declaration of emergency under section 10-3-311, MCA.

Very truly yours



MIKE GREELY  
Attorney General